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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 470

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, THE NORTHWEST PETROLEUM ASSOCIATION, ET AL., APPELLANTS

vs.

NORTHERN PACIFIC RAILWAY COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA

FILED OCTOBER 24, 1932

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2 [Omitted.]

3 In United States District Court, District of Minnesota, Third Division

In Equity

NORTHERN PACIFIC RAILWAY COMPANY, GREAT NORTHERN RAILWAY COMPANY, CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, MINNEAPOLIS, ST. PAUL AND SAULT STE. MARIE RAILWAY COMPANY, AND CHICAGO AND NORTHWESTERN RAILWAY COMPANY, PETITIONERS

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Petition

Filed April 1, 1932

To the Honorable the Judges of the District Court of the United States for the District of Minnesota, Third Division:

The petitioners, hereinabove named, bring this action against the United States of America and Interstate Commerce Commis-
4 sion (hereinafter referred to as the commission) for the purpose of enjoining, setting aside, suspending and annulling a certain order of the commission, entered on December 1, 1931, in proceedings entitled No. 17304, International Oil Company, et al. v. Abilene and Southern Railway Company, et al., and No. 21737, Dacotah Oil Company, et al. v. Atchison, Topeka and Santa Fe Railway Company, et al. For their cause of action, petitioners state:

I

Northern Pacific Railway Company is a corporation created and existing under and by virtue of the laws of the State of Wisconsin; Great Northern Railway Company is a corporation created and existing under and by virtue of the laws of the State of Minnesota; Chicago, Milwaukee, St. Paul and Pacific Railroad Company is a corporation created and existing under and by virtue of the laws of the State of Wisconsin; Minneapolis, St. Paul and Sault Ste. Marie Railway Company is a corporation created and existing under and by virtue of the laws of the States of Minnesota, Wisconsin, Michigan and the Territory of Dakota; Chicago and Northwestern Railway

Company is a corporation created and existing under and by virtue of the laws of the States of Michigan, Illinois and Wisconsin. All of the petitioners are and at all times herein mentioned have been common carriers of property and passengers by railroad subject to the interstate commerce act. Petitioners, Northern Pacific Railway Company and Great Northern Railway Company have their principal offices and their principal operating offices in the city of St. Paul, in the District of Minnesota, Third Division. All of the petitioners own and operate lines of railroad extending into and through those portions of the States of Minnesota and North Dakota lying west of the cities of St. Paul and Minneapolis, Minnesota.

5 The defendant, United States of America, is sued pursuant to express authority of the Congress of the United States, as provided in an act, approved October 22, 1913, known as the district court jurisdiction act, being part of the urgent deficiency appropriations act.

The defendant, Interstate Commerce Commission, is a public corporation and administrative tribunal created by the act to regulate commerce, approved February 4, 1887, as amended (interstate commerce act), and is specifically charged with the administration and enforcement of the provisions of said act.

The order of the commission herein complained of was made upon the petition of numerous shippers and receivers of gasoline and other refined petroleum products residing or having their places of business in the States of Minnesota and North Dakota, and the matters covered by said order arose in part in said District of Minnesota, Third Division.

II

The States of Missouri, Kansas, Oklahoma, and Texas contain enormous petroleum oil resources and, together with portions of Louisiana and Arkansas, constitute what is commonly known as the midcontinent field. There are more than 345 refineries located at various points throughout this territory and the production and shipment of gasoline and other petroleum products from these refineries is enormous.

The States of Illinois, Iowa, Nebraska, Wisconsin, Minnesota, North Dakota, and South Dakota constitute what is commonly known as western trunk-line territory. This territory consumed a tremendous volume of gasoline and other petroleum products and is an important and highly competitive market for the sale thereof.

6 Petitioners are the delivering lines for the transportation of petroleum products destined to points in North Dakota and northwestern Minnesota and control the freight rates to said destinations from all producing or shipping points, but they have no control over the rates from the midcontinent field to other destinations in western trunk-line territory excepting certain points in South Dakota, west of Sioux Falls and Watertown.

III

The freight rate structure applicable to the transportation of petroleum and its products from the midcontinent field to western trunk-line territory is what is known as a group adjustment. The territory of origin is divided into groups, the more important of which are Group 1, Kansas City, Mo., Atchison and Leavenworth, Kans., and St. Joseph; Group 2, embracing all other refining or shipping points in Kansas and also Joplin, Mo.; Group 3, extending across the State of Oklahoma and embracing all shipping points in that State, except Devol; the Burkburnett or north Texas group in northern Texas; the Ranger group in Texas immediately south and west of the north Texas group; the south Texas group, embracing Houston, Beaumont, Port Arthur, and other points in that vicinity; the New Orleans-Baton Rouge group in Louisiana; and the Shreveport-El Dorado group in Louisiana and Arkansas. Group 3 is regarded as the base group in the adjustment of freight rates and the rates from other groups are and for many years have been differentially related to the rates from Group 3.

The rates on petroleum products from the midcontinent field to that portion of western trunk-line territory lying on and east
7 of the line of Great Northern Railway Company from Sioux City, Iowa to Duluth, Minnesota, through Sioux Falls, South Dakota, Pipestone, Marshall, Hanley Falls, Granite Falls, Willmar, Paynesville, and Hinckley, Minnesota, are and, at all times herein mentioned, have been depressed rates compelled by the competition of pipe lines extending from the midcontinent field to Chicago, Illinois, and the competition of tank steamers operating on the Great Lakes from said refineries to tank farms located at Superior, Wis., and said rates are and, at all times herein mentioned, have been substantially lower than the usual and customary basis of rates on petroleum products, in carloads, maintained by petitioners. Destinations in Minnesota, North Dakota, and South Dakota, west of said line of the Great Northern Railway Company, are not intermediate to Superior, Wis., or to Chicago, Ill., from the midcontinent field, and there are no pipe lines for the transportation of petroleum or its products extending into said destination territory, and the rates on petroleum products, in carloads, maintained by petitioners from the midcontinent field to said destinations are and, at all times herein mentioned, have been relatively and actually higher than the competitive rates from the midcontinent field to Superior, Wis., and Duluth, Minnesota, and intermediate points situated on and east of said line of the Great Northern Railway Company from Sioux City to Duluth. Prior to the making of the reports and orders hereinafter mentioned, the Interstate Commerce Commission had found such higher rates to be just and reasonable.

IV

There are large petroleum oil resources in the States of Wyoming and Montana, and there are numerous refineries in said States, which are and, at all times herein mentioned, have been engaged in
8 shipping large quantities of gasoline and other petroleum products, in carloads, over the lines of petitioners to destinations in North Dakota, South Dakota, and Minnesota. Casper, Wyoming, situated on the line of petitioner, Chicago and Northwestern Railway Company, is the principal originating point. The producers and refiners of petroleum products in Wyoming and Montana come into keen competition with the producers and refiners located in the midcontinent field in marketing their products at destinations in North Dakota, South Dakota and western Minnesota, and the volume of business done by the respective producing fields depends to a considerable extent upon the relationship of their freight rates to those of their competitors. The measure of the rates which petitioners can maintain on petroleum products, in carloads, from said refineries in Wyoming and Montana to destinations in the eastern portions of North Dakota and South Dakota, and the western portion of Minnesota is and, at all times herein mentioned, has been substantially affected by the measure of the rates contemporaneously maintained to said destinations from refineries in the midcontinent field.

V

On July 15th, 1925, numerous individuals, partnerships and corporations engaged in the sale of petroleum and its products at various towns, villages and cities on petitioners' lines of railroad in North Dakota and western Minnesota, filed with the commission a complaint, which, as subsequently amended, alleged that the joint rates maintained by petitioners and their connections for the transportation of petroleum and its products, in carloads, from points of origin in the States of Kansas, Missouri, Oklahoma and Texas to said towns, villages and cities were and would continue to be unjust and unreasonable in violation of section one of the interstate com-
9 merce act; that complainants had made and were continuing to make carload shipments on said rates and had been and would thereafter continue to be damaged by the collection of said rates; and complainants prayed the commission for an order requiring the establishment of just and reasonable rates for the future and requiring petitioners to pay reparation on all shipments moving within two years prior to the filing of the complaint and upon all shipments which might move after the filing of the complaint and up to the effective date of the commission's order fixing rates for the future. Said complaint was entitled International Oil Company, et al. v. Abilene and Southern Railway Company, et al., and was docketed by the commission as No. 17304. Said complaint, as

amended, did not bring in issue any rates to destinations in South Dakota or any rates to any destinations situated on or east of the line of Great Northern Railway Company from Duluth, Minnesota, through St. Cloud, Willmar, and Granite Falls, to Pipestone, Minnesota, and did not allege that the rates assailed were either unjustly discriminatory or unduly prejudicial to complainants or their traffic, and did not ask the commission to prescribe any relationships between said rates and other rates.

Hearing was had upon said complaint before an examiner of the commission at Fargo, North Dakota, on October 23, 24 and 26, 1925.

VI

On May 10, 1926, after the close of the hearings in No. 17304, the commission made and filed its report in a proceeding entitled No. 15584, Midcontinent Oil Rates, 1925, 112 I. C. C. 421, a copy of which report is hereto attached, marked "Exhibit A," and made a part hereof, wherein numerous complaints filed by operators of petroleum refineries in the midcontinent field had been consolidated for hearing upon one record. Said consolidated complaints together brought in issue the lawfulness, under sections 1, 2, and 3 of the interstate commerce act, of the rates on petroleum products, in carloads, from points in Missouri, Kansas, Oklahoma, Arkansas, Louisiana, and Texas to western trunk line territory, including Minnesota, North Dakota, and South Dakota, and to Illinois, Indiana, and the upper peninsula of Michigan. In and by the said report, the commission found that the record was insufficient to justify specific findings with respect to the rates to destinations in northern Nebraska, South Dakota, North Dakota, and northern Minnesota, lying west of the line extending from Duluth, Minnesota, through Sioux Falls, South Dakota, and that because the rates to South Dakota destinations were under attack in another proceeding pending before the commission entitled No. 16309, South Dakota Independent Oil Jobbers Association v. A. T. & S. F. Ry. Co., et al., particularly in their relation to the rates to points in Iowa and southern Minnesota, the cases consolidated under No. 15584 would be held open for further consideration in connection with No. 16309. The commission further found in said report that the rates from the midcontinent field to the destinations in issue were as a whole not in excess of reasonable maximum rates, but that said rates were unduly prejudicial or preferential as between the various origin groups, and also as between the various destination points. The commission further found that certain revised rates to specified destinations from Group 3 in the midcontinent field would for the future be just, reasonable and nonprejudicial, and that certain specified differentials over or under the rates from Group 3 should be observed in publishing rates from the other origin groups in the midcontinent field to the same destinations, and that the carriers should adjust the rates to other destinations in proper relationship to the pre-

scribed rates and should give effect to the commission's findings within 120 days after service of the report. The rates thereby found to be reasonable and nonprejudicial were higher than the rates theretofore maintained by the carriers to Kansas City, St. Louis, and Chicago, at which points pipe line competition was and is the keenest, and also to Cedar Rapids, Keokuk and Dubuque, Iowa, Peoria, Ill., and Milwaukee, Wis., at which points the rates from the midcontinent field were and are substantially affected by the rates maintained to Chicago to meet pipe line competition, but the rates found reasonable to Fort Dodge, Mason City and Sioux City, Iowa, Sioux Falls, So. Dak., St. Paul and Duluth, Minnesota represented substantial reductions below the existing rates. An order requiring the carriers participating in the traffic to establish rates which should comply with its said findings was thereafter made and entered by the commission on January 14, 1927, and pursuant to said order the reduced rates required by the commission's findings to Fort Dodge, Mason City, Sioux City, Sioux Falls, St. Paul, and Duluth, and intermediate points, including St. Cloud, Willmar, Granite Falls, and Pipestone, Minnesota, were established and became effective on July 20, 1927, and have ever since remained in effect.

VII

On March 5, 1928, the commission made and filed a report entitled Midcontinent Oil Rates, 1925, Second Supplemental Report of the Commission, 139 I. C. C. 605, wherein it made findings upon the issues in No. 17304, International Oil Company et al. *v.* Abilene and Southern Railway Company et al., together with its find-
12 ings upon the issues in No. 16309, South Dakota Independent Oil Jobbers Association *v.* A. T. & S. F. Ry. Co. et al., and upon the issues reserved in the complaint cases, consolidated under No. 15584, with respect to the rates on petroleum and petroleum products from the midcontinent field to destinations in South Dakota, North Dakota, and northwestern Minnesota. In and by the said report the commission found that the prayer for reparation upon past shipments should be denied, but that many of the rates assailed should be substantially reduced in order to harmonize the rates from the midcontinent field to destinations in North Dakota, South Dakota, and northwestern Minnesota with the reduced rates prescribed to Sioux City, Sioux Falls, St. Paul, and Duluth, and intermediate points in the general readjustment which the carriers had been required to make in No. 15584. The commission stated in its said report that said reductions had for their purpose the creation of a more consistent and reasonable relationship of rates as between those points and other points in western trunk line territory, and that the reduced rates prescribed to destinations in northwestern Minnesota, North Dakota, and South Dakota were of the same nature and were a part of the same general readjustment. An

order was thereupon entered by the commission in said proceedings which required defendants to establish on or before June 14, 1928, the substantially reduced rates prescribed in its said report. A true copy of said report and order is hereto attached, marked "Exhibit B," and made a part hereof.

VIII

Thereafter and on or about May 4, 1928, petitioners filed with the commission a petition asking the commission to postpone the effective date of said order of March 5, 1928, in Nos. 16309 and
13 17304, and to vacate its outstanding orders in No. 15584 and associated cases in so far as said orders related to rates to Lincoln and Omaha, Nebraska, Sioux City, Fort Dodge, and Mason City, Iowa, Duluth and St. Paul, Minnesota, and Sioux Falls, South Dakota, and to grant them a further hearing upon a single record with respect to the level of the rates from the midcontinent field to destinations in Nebraska, Iowa, South Dakota, North Dakota, and Minnesota. In said petition, petitioners alleged and offered to prove that the rate reductions required by the commission would result in serious reductions in their revenues and earnings; that they were not earning and had not been able to earn the fair return contemplated by section 15–A of the interstate commerce act; that the prescribed rates were and would be unreasonably low because prescribed with relation to rates depressed by pipe line and carrier competition of controlling force; that the competition of motor trucks and other gasoline propelled vehicles was rapidly increasing and was making such inroads upon the traffic and revenues of petitioners as to threaten them with financial disaster, and that revisions of rate relationships, especially in the case of rates on gasoline and other motor fuels, should be made by authorizing increases in the rates recognized by the commission as subnormal rates, instead of by requiring reductions in rates not found to be unreasonable except in relation to said subnormal rates. Said petition was wholly denied by the commission by order entered February 11, 1929. The reduced rates required by the commission's order of March 5, 1928, in Nos. 16309 and 17304, were published and became effective on June 14, 1928.

14

IX

Upon the establishment of said reduced rates from the midcontinent field to destinations in North Dakota, South Dakota, and northwestern Minnesota, the operators of refineries in Wyoming represented to petitioners that they would be unable to continue to meet the competition of the refineries in the midcontinent field in marketing their products at said destinations unless granted similar rate reductions from said Wyoming refineries to said destinations. Petitioners accordingly filed with the commission tariffs proposing reduced rates on petroleum and its products in tank carloads from

Casper and other producing points in Wyoming to points in North Dakota and South Dakota, and to certain cities in Minnesota, Iowa, Nebraska, and Montana to become effective on or about August 20, 1928, which proposed reduced rates had for their purpose the restoration of the origin rate relationships existing prior to June 14, 1928. Upon protest of operators of refineries situated in the midcontinent field, the commission suspended the operation of said schedules by orders dated August 14 and August 23, 1928, and entered upon an investigation and hearing concerning the lawfulness of said rate reductions. On March 30, 1929, after such hearing and investigation, the commission made and filed its report and order in said proceeding entitled, Investigation and Suspension Docket No. 3148, Petroleum and its Products from Points in Wyoming to South Dakota, North Dakota, Montana, Iowa, Minnesota, and Nebraska, 153 I. C. C. 363, a true copy whereof is hereto attached, marked " Exhibit C," and hereby made a part hereof. In and by its said report, the commission found that the relationships between the existing rates from Wyoming and the rates from the midcontinent field had been discussed and passed upon by it in fixing the reduced rates
15 established June 14, 1928, from the midcontinent field, pursuant to its findings and order in Dockets Nos. 16309 and 17304, although such relationships had not been brought in issue in said proceedings; that the producers and refiners in both origin territories are in keen competition with each other in marketing their products in the destination territory, and that the proposed rates would give an undue and unreasonable preference and advantage to the shippers and localities situated in Wyoming, and would subject the shippers and localities in the midcontinent field to an undue and unreasonable prejudice and disadvantage, contrary to Section 3 of the act. Petitioners were ordered to cancel the tariffs proposing said reduced rates.

X

The complaint in No. 21737, Dacotah Oil Company, et al. v. Atchison, Topeka and Santa Fe Railroad Company, et al., was filed with the Commission on November 30, 1928, by L. A. Arbogast, jr., one of the complainants in No. 17304, and J. R. Stewart, copartners, doing business under the partnership name of the Dacotah Oil Company, with principal offices at Jamestown, North Dakota, and engaged in the business of buying, selling, and distributing petroleum and its products at Buffalo, Valley City, Jamestown, and Cleveland, North Dakota. Said complaint alleged that the rates on petroleum products including gasoline, kerosene, distillate, gas oil, and fuel oil from points in the States of Arkansas, Kansas, Oklahoma, and Texas to Buffalo, Valley City, Jamestown, and Cleveland, North Dakota, established on June 14, 1928, in compliance with the order of March 5, 1928, in No. 17304, were unjust and unreasonable, in violation of section one of the interstate commerce act, and

asked the commission to order petitioners to pay to complainant
16 reparation on shipments made since November 10, 1926, and during the pendency of the proceeding, and to order defendants to establish just and reasonable rates for the future. Said complaint was heard before an examiner of the commission at Jamestown, No. Dak., on March 6, 1929, on which date the record was closed, and was amended at the hearing so as to include as party complainants the Berg Oil Company, Jamestown Oil Company, and the Farmers Union Cooperative Oil Company, all of Jamestown, No. Dak., and the Pegg Garage, of Valley City, No. Dak. Thereafter, and on or about June 7, 1929, the parties to said proceeding were served with the examiner's proposed report wherein the examiner found that the rates assailed had been prescribed by the commission in relation to other rates; that the proper way to bring said rates to the commission's attention was by a petition to reopen No. 15584 and associated cases, and to reopen Nos. 16309 and 17304, and that the commission should find the rates assailed not unreasonable and dismiss the complaint. No exceptions to said report were filed by any of the parties to said proceeding.

XI

Thereafter, by order entered June 10, 1929, the commission reopened No. 17304 for further hearing. Said order was made by the commission upon consideration of the record therein and a petition filed by complainants in said proceeding on or about April 19, 1929, which alleged, among other things, that the rates prescribed by the commission, effective June 14, 1928, were unjustifiably high as compared with the rates prescribed to points in South Dakota, and to St. Paul, Paynesville, St. Cloud, Willmar, and Granite Falls, Minnesota, the gateways immediately adjoining the destination territory in western Minnesota and North Dakota; that to points
17 in North Dakota, such as Ellendale, Jamestown, Devils Lake, and points west thereof, the shortest distances from the mid-continent field were via Aberdeen or Roscoe, South Dakota, and that in arriving at the dates prescribed to such destinations in North Dakota the commission erroneously disregarded the rates which it had contemporaneously fixed to Aberdeen and Roscoe, South Dakota, and disregarded said short line distances. Said petition did not allege or offer to prove that said rates prescribed to destinations in western Minnesota and North Dakota were or would be unjustly discriminatory or unduly prejudicial of complainants or their traffic, or unduly preferential of said gateways or of destinations in South Dakota, or receivers of petroleum products engaged in business at such points.

XII

On September 16, 1929, the Standard Oil Company of Indiana, engaged in the operation of refineries at Casper, Wyoming, filed with

the commission a complaint alleging that the rates on petroleum and its products from Casper, Wyoming, to destinations in the States of North Dakota, South Dakota, Iowa, and Minnesota were and for the future would be unreasonable, in violation of section one of the interstate commerce act, and unduly prejudicial to complainant, and unduly preferential of producers and shippers located at points within the States of Arkansas, Kansas, Oklahoma, Texas, Louisiana, and other States, in violation of section three of said act. Said complaint was docketed by the commission as No. 22714, and is entitled Standard Oil Co. (Indiana) v. Chicago and North Western Railway Company, et al., and was served on petitioners on or about October 4, 1929.

18 XIII

On September 19, 1929, the Public Service Commission of Wyoming filed with the commission a complaint on behalf of the State of Wyoming, and on behalf of the general commercial and industrial interests of the State of Wyoming, alleging that said State is the owner of land situated within the State, from which crude oil is produced; that the rates on petroleum oil from points in Wyoming to destinations in North Dakota, South Dakota, Minnesota, Iowa, Nebraska, and Montana were and for the future would be unjust and unreasonable, as compared with the rates on petroleum oil from stations in the mid-continent field, and unduly prejudicial to the State of Wyoming and producers and shippers of petroleum products within the State, and unduly preferential of producers and shippers of petroleum products located in the mid-continent fields, in violation of section three of the interstate commerce act. Said complaint further alleged, as follows:

"That for many years, a relationship in rates on petroleum products from Wyoming refineries and from the mid-continent field was maintained, with minor exceptions, on a fairly equitable, nonpreferential, and nonprejudicial basis to the destination districts described in Paragraph II; that as a result of the decision of this commission in Midcontinent Oil Rates, 1925, Docket 15584, 16309, and 17304, 139 I. C. C. 605, substantial and general reductions were required in rates from Group 3 origins to many destinations in South Dakota, North Dakota, and Minnesota, while no reductions were made in the rates from Wyoming refining and shipping points to stations in North Dakota and Minnesota and only minor reductions were made, in certain instances, to destinations in South Dakota, thereby very generally and seriously destroying an adjustment and relationship in rates that had existed for many years with resultant serious
19 results to the interests represented by this complainant, the resulting rates from Wyoming refineries and the resulting origin relationship, Wyoming-Midcontinent, violating not only sections (1) and (3) of the interstate commerce act, but also the provisions of the Hoch-Smith resolution."

Said complaint was docketed by the commission as No. 22733, entitled Public Service Commission of Wyoming *v.* Chicago and Northwestern Railway Company, et al., and was served on petitioner on or about October 10, 1929.

XIV

On or about December 12, 1929, petitioners were served with notice issued by the commission that No. 17304 was assigned for further hearing at Fargo, No. Dak., on January 13, 1930. Thereupon counsel for petitioners seasonably applied to the commission for a postponement of said hearing in order that the issues in Docket No. 17304 might be heard upon a common record with the issues in Nos. 22714 and 22733 involving the relationships of the rates from the midcontinent field to the rates from the Wyoming refineries to the same destinations in western Minnesota and North Dakota. Said application was made by letter dated December 21, 1929, addressed to the chief examiner of the commission, and a copy thereof was forwarded to counsel for the interested parties in No. 17304. A true copy of said letter is hereto attached, marked "Exhibit D," and made a part hereof. On December 26, 1929, said chief examiner notified counsel for petitioners by telegram that complainants objected to postponement, and that it was therefore impracticable to postpone said hearing. By notice dated December 27, 1929, the commission canceled the assignment of said hearing for January 13, and
20 reassigned said case for further hearing at Fargo, No. Dak., on January 14, at the request of and to serve the convenience of counsel for complainants.

XV

On or about January 3, 1930, petitioners, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Great Northern Railway Company, Minneapolis, St. Paul and Sault Ste. Marie Railway Company and Northern Pacific Railway Company filed with the commission their joint petition dated December 31, 1929, in Nos. 17304, 22714 and 22733, asking the commission to consolidate said proceedings for hearing and decision upon a common record, and to postpone the hearing in Docket No. 17304, set for January 14, 1930, at Fargo, No. Dak. Petitioners set forth in said petition the facts hereinbefore stated, and alleged that if any readjustment were made in Docket No. 17304, in the rates prescribed by the commission and established June 14, 1928, from the midcontinent fields to destinations in North Dakota and western Minnesota, such readjustment would directly and necessarily disturb the relationship between said rates and the rates from points or origin in Wyoming, which relationships were brought in issue by the complaints in Nos. 22714 and 22733, and that by reason thereof said proceedings ought to be tried together upon a common record, and that petitioners were rightfully entitled to a

consolidation of said proceedings. Thereafter, and on or about January 14, 1930, petitioners and their connections operating in western trunk line territory filed with the commission a petition in No. 15584 and associated cases requesting the commission to reopen said proceedings for further hearing with respect to the rates on petroleum products therein prescribed from the midcontinent field
21 to the key or gateway points, such as Lincoln and Omaha, Nebraska; Des Moines, Fort Dodge, Sioux City, and Mason City, Iowa; Sioux Falls, South Dakota; and St. Paul and Duluth, Minnesota, and to the territory beyond such gateway points, and to consolidate with said proceedings Nos. 22714 and 22733, and all other complaints then pending involving the rates on petroleum products from all producing points to said destinations for hearing upon a single record, in order to avoid a multiplicity of suits and unreasonable expense to the defendants in said proceedings. In said petition it was alleged that reductions theretofore made in rates on petroleum products to said destination had resulted in serious reductions in the gross and net revenues of the carriers serving said destinations; that the rates on petroleum products from all producing groups to said destination territory were under attack in various formal complaints in numerous separate proceedings; that said rates ought not to be dealt with and adjusted by the commission piecemeal; that experience had demonstrated that piecemeal revisions of the rate structure of the carriers invariably resulted in unnecessary dissipation of the revenues of the carriers and created inconsistencies and dissatisfaction with the resulting rates, and that the only way in which the complaints of discrimination, preference and prejudice in the rate structure could be satisfied would be by proceeding upon one record, with all interested parties before it, to work out a harmonious, consistent and otherwise lawful adjustment which would protect rather than unnecessarily sacrifice the revenues of the carriers. Said petitions were denied by the commission by order dated April 14, 1930.

22 XVI

On December 1, 1931, the commission made and filed its report in Nos. 17304 and 21737, under the title International Oil Company, et al. v. Abilene and Southern Railway Company, et al., 179 I. C. C. 435, together with the order herein sought to be enjoined, set aside, suspended and annulled, which order incorporates said report as a part thereof by reference, and these were served upon petitioners on or about December 21, 1931. A copy of said report and order is hereto attached, marked "Exhibit E," and made a part hereof. The order requires petitioners and their connections to reduce substantially, effective March 15, 1932, all of the rates prescribed or authorized as reasonable in and by the commission's second supplemental report and order of March 5, 1928, in Midcontinent Oil Rates, 1925,

from all points of origin in the midcontinent field to all destinations in Minnesota and North Dakota west of the line of the Great Northern Railway Company from Duluth, Minnesota, to Pipestone, Minnesota.

XVII

It appears on the face of the commission's said report of December 1, 1931, that in requiring the said rates previously prescribed by it as just, reasonable, and otherwise lawful to be reduced on March 15th, 1932, the commission did not act in the exercise of the authority conferred upon it by law to determine whether said rates would for the future be just and reasonable in and of themselves with regard to the service rendered, but proceeded upon the erroneous assumption that arbitrary power was conferred upon it to reduce said rates, although otherwise just and reasonable in order to bring about what it conceived to be reasonable and consistent relationships
23 between such rates and rates not in issue to other destinations, without having before it any issues of unjust discrimination or undue or unreasonable preference or prejudice, whatsoever, and without making any findings that the maintenance of the existing rates would make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or would subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. In so acting the commission proceeded upon a misconstruction and misinterpretation of the interstate commerce act and of its powers and duties thereunder, and exceeded its powers in the premises, by reason whereof, said order of December 1, 1931, is beyond the authority of the commission to make and is void.

XVIII

It appears on the face of said report of December 1, 1931, that the commission found and concluded that a downward revision of the rates previously prescribed by it from the mid-continent field to western Minnesota and North Dakota was necessary in order to bring about "a reasonable and consistent adjustment" of rates upon consideration only of the relationship of said rates to rates not in issue from the midcontinent field to destinations in South Dakota and to the gateways on the eastern border of the destination territory in issue; that the commission considered said rates to South Dakota and to said gateways to be below the level of maximum reasonable rates and to be necessary only for the purpose of maintaining equitable relationships to other rates, and that the
24 commission refused to consider the relationships between the rates in issue and the competitive rates from Casper, Wyo-

ming, because said relationships had not been brought in issue by the complaints. In requiring the rates in issue to be reduced upon such findings, after denying the petitions and requests of the carriers for a reopening and rehearing of the proceedings consolidated for hearing and decision in No. 15584, Midcontinent Oil Rates, 1925, wherein all of said rates and their relationships to each other were brought in issue, and after denying the petitions and requests of the carriers for a consolidation of Nos. 17304 and 21737 with said proceedings and with the complaints in Nos. 22714 and 22733, which brought in issue the relationships between said rates and the rates from Wyoming producing points and in denying said petitions and requests of the carriers, and in refusing to consider or determine the relationships necessary to be observed between said rates from the midcontinent field and said rates from Wyoming producing points, the commission acted in so arbitrary and unreasonable a manner as to render its order of December 1, 1931, even if within the form of its delegated powers, beyond its authority and void.

XIX

The interpretation placed by the commission upon the provisions of section 15 (1) of the interstate commerce act, and of its powers thereunder in the enforcement of section one of said act, is such, if correct, as to render said provisions unconstitutional and void because in contravention of the fifth amendment to the Constitution of the United States and because constituting a delegation to the commission of the legislative powers of Congress in contravention of § 1 of Article I of the Constitution of the United States.

25

XX

It appears on pages 442 and 443 of the commission's said report of December 1, 1931, that notwithstanding its failure and refusal to consider or determine the relationship necessary to be observed between the rates in issue and the rates from the Wyoming field, the commission in arriving at its conclusions and in making its order took into consideration certain comparisons between the rates in issue and certain rates on petroleum and its products from points in Wyoming to points in Montana prescribed by the commission in a collateral proceeding long after the records in Nos. 17304 and 21737 had been closed. Petitioners were never afforded an opportunity to be heard upon the question as to the weight to be accorded said comparisons, and were given no opportunity to introduce evidence in respect of the issue injected by the commission into said proceedings as to the measure of rates from the midcontinent field necessary "considering the respective territories through which the traffic moves" to be "in line with those recently prescribed from Wyoming points to Montana points." No evidence as to the traffic and transportation conditions in the territory through which traffic moves

from Wyoming points to points in Montana was of record in the proceedings before the commission in Nos. 17304 and 21737, and in considering said rate comparisons the commission gave consideration to facts and matters outside the record, by reason whereof the order of the commission is void and beyond the authority of the commission to make.

26 XXI

The record before the commission in No. 17304 was closed on January 15, 1930. The record before the commission in No. 21737 was closed on March 6, 1929. Between said dates and December 1, 1931, economic conditions and traffic and transportation conditions in the United States and particularly in the regions served by petitioners and their connections operating in western trunk-line territory and in the midcontinent field had changed so radically that said records were stale and neither representative of the existing nor of the future conditions at the time said report and order of December 1, 1931, were made. On October 16, 1931, 45 days before the issuance of its report and order in said proceedings, the commission issued its report and order in a proceeding known as Fifteen Per Cent case, 1931, Ex Parte No. 103, In the Matter of Increases in Freight Rates and Charges, 178 I. C. C. 539, wherein it denied an application filed by the steam railroads of the United States for a 15 per cent increase in all freight rates and charges, and did therein find and report in substance, as follows:

(a) That during 1930 and 1931 the railroads as a whole suffered a severe decline in traffic and earnings, due chiefly and predominantly to the existing business depression.

(b) That since 1930 there had been an abrupt decline in railroad credit that reflected a loss of public confidence in and distrust of railroad securities as a reliable and stable investment, due primarily to the shrinkage in railroad earnings, but accentuated by a realization that the railroads are now faced by serious competition from other, largely new, and developing means of transportation; that if this distrust were prolonged for any considerable period of time the results were likely to be very serious, both in their immediate effect on the railroads themselves and in their indirect effect upon the financial situation generally.

27 (c) That shippers are now searching diligently for means of saving every cent possible in expense of distribution, and there are important opportunities for such saving that are now being utilized in substantial degree, namely, (1) waterway competition through the Panama Canal, along the Atlantic coast and Gulf, on the Great Lakes, on the Mississippi and Ohio Rivers, and on the Hudson River and New York Barge Canal; (2) transportation by truck, which is a new form of competition which has been develop-

ing with great rapidity and is being aided by low prices for gasoline and rubber and the oversupply of labor; (3) pipe lines for the extensive transportation of gasoline and natural gas, which have been added to those already existing for the transportation of crude oil; and that by reason of these rapidly developing agencies of transportation a horizontal advance in all railroad freight rates and charges would not increase revenues, except perhaps temporarily, and would soon prove detrimental to the interests of the railroads.

(d) That "railroad managements now face new conditions which compel changes in methods of operation, manner of service, and price policies;" that "to meet the new conditions effectively radical changes in service and rates must be made;" that "so far as rates are concerned, it is clear that the present structure has developed under principles and theories which gave no thought to the competitive agencies of transportation which now exist," and that "it is evident that the traffic departments must give new thought to the rate structure in the light of existing conditions."

(e) That in view of the premises, the traffic departments of the railroads should address themselves to the task of making such changes in the rates on particular kinds of traffic as will, in their judgment after careful analysis of all attendant circumstances, produce additional revenue and which can be supported as reasonable under existing conditions; and that the commission would
28 be guided, in determining whether any such rate changes should be suspended, by its own general knowledge and the record in said Fifteen Per Cent case, 1931, as bearing on the particular kind of traffic in question.

(f) That such rate readjustments would necessarily be slow and would not fully meet the existing emergency and that, as a temporary measure of relief, a slight additional charge might therefore be imposed on certain designated classes of traffic, for a short period, upon condition that the revenues produced thereby be marshalled for the benefit of carriers unable to meet their interest charges.

XXII

In and by its said report in said Fifteen Per Cent case, 1931, the commission construed the provisions of section 15–A of the interstate commerce act as imposing upon it an affirmative duty to exercise its powers in every reasonable and practicable way to protect the earnings of the carriers in the public interest. In making and entering its said order of December 1, 1931, in Nos. 17304 and 21737, and in thus requiring said rates on petroleum products from the midcontinent fields to destinations in Minnesota and North Dakota, previously prescribed by it as reasonable, to be reduced upon stale records and with knowledge of, but in disregard of, the changed conditions aforesaid and of the effects of said reductions upon the earnings of the carriers, the commission disregarded the requirements of said

section 15–A, as construed by it, and acted in violation of the affirmative duties imposed upon the commission by law, by reason whereof said order is void.

29 XXIII

On or about February 3, 1932, petitioners duly filed with the commission a petition on behalf of themselves and all other defendants in Nos. 17304 and 21737, asking the commission to vacate and set aside, or postpone the effective date of said order of December 1, 1931, and to grant a rehearing and reconsideration thereof, and to reopen said proceedings for the taking of further evidence, in order to permit defendants to show the changed conditions as aforesaid. A copy of said petition is hereto attached, marked "Exhibit F," and made a part hereof. Said petition alleged that since the close of the records there had been material and important changes in the financial condition of said defendants and in the operating, traffic, and transportation conditions in the territory which they serve, which had seriously and adversely affected and would continue seriously and adversely to affect their gross and net revenues, and were material to a determination of reasonable rates on petroleum products from the midcontinent fields to said destinations in western Minnesota and North Dakota; that the commission had recognized said changed conditions in its report in Fifteen Per Cent case, 1931; that in consequence of said changed conditions their freight rate structures were necessarily undergoing many revisions, including rate reductions compelled by competition of other forms of transportation; that such revisions would necessitate rate increases on traffic that would bear increased rates; that said petroleum products traffic from the midcontinent fields had not diminished but had increased in volume during the general depression, due to the greater activity of motor trucks; that said traffic could and should, in the opinion of competent traffic officials, pay increased rates, rather than
30 reduced rates; and that the rate reductions required by the commission's order would reduce the annual gross and net revenues of petitioners and their connections by large sums of money, both in their direct effect upon revenue and in their indirect effect upon the revenues of petitioners by reason of reductions in other related rates that would be demanded in consequence thereof. Petitioners offered to prove each and all of said allegations if a rehearing should be granted. Each and all of the facts alleged in said petition are true and are material to the issues in said proceedings and have a material bearing upon the exercise of the powers and duties of the commission under the interstate commerce act and especially under section 15–A thereof. On March 7, 1932, said petition was denied by the commission.

XXIV

The action of the commission in denying said petition, and by so doing in requiring the reduced rates prescribed by its order of December 1, 1931, to become effective on March 15, 1932, without any hearing or consideration of the changed conditions therein set forth, constituted a disregard and a violation of the duties imposed upon it by the interstate commerce act, an abuse of its administrative discretion, a denial to the petitioners of a fair hearing, constituting a denial of due process of law, in violation of the fifth amendment to the Constitution of the United States, and was in excess of the authority conferred on the commission by law, by reason whereof said order of December 1, 1931, is void.

31

XXV

By reason of the denial by the Interstate Commerce Commission of said petition, petitioners and their connections were compelled, under the severe penalties prescribed by the interstate commerce act, to establish on March 15, 1932, the reduced rates prescribed in and by said order of December 1, 1931. Unless the enforcement and operation of said order is restrained and suspended during the pendency of this proceeding irreparable injury will ensue to petitioners in that they will be compelled to maintain, charge and collect said reduced rates at a loss of not less than $600,000.00 annually to petitioners and their connections, and at a loss of not less than $130,000.00 annually to Great Northern Railway Company, a loss of not less than $98,000.00 annually to Northern Pacific Railway Company, a loss of not less than $42,000.00 annually to Chicago, Milwaukee, St. Paul and Pacific Railroad Company, and a loss of not less than $35,000.00 annually to Minneapolis, St. Paul & Sault Ste. Marie Railway Company, and in that they will be subjected to demands for corresponding reductions in their rates on petroleum products in tank carloads from refining points in Wyoming and Montana, and from other shipping points to destinations in western Minnesota and North Dakota, which will entail, if granted, a substantial further loss in revenues to petitioners.

Wherefore, petitioners pray:

(a) That a subpoena or subpoenas in chancery issue out of and under the seal of this honorable court, directed to the defendants, as required by law, and that due and proper service of such process and of this petition be forthwith made by filing a copy thereof in the office of the secretary of the commission, and another copy in the

32 Department of Justice, as in said district court jurisdiction act provided, and that thereby the defendants and each of them be required, on or before a date to be specified in such subpoena or notice, to appear herein and answer this petition, but not under oath, answer under oath being hereby expressly waived.

(b) That a temporary or interlocutory injunction be entered herein, restraining, enjoining and suspending, until the further order of this court, the effect and enforcement of said order of the commission.

(c) That after final hearing this court adjudge, order, and decree that said order of the commission is and has at all times been beyond the lawful authority of the commission, and wholly void, and that said order be perpetually set aside, suspended and annulled, and the enforcement thereof perpetually enjoined.

(d) That petitioners, and each of them, may have such other and further relief in the premises as to equity and justice may appertain and as may be deemed by this honorable court to be adequate and proper under the circumstances.

J. N. DAVIS,
P. F. GAULT,
A. H. LOSSOW,
R. J. HAGMAN,
J. P. PLUNKETT,
M. L. COUNTRYMAN, Jr.,
Solicitors for Petitioners,
Room 1018, Northern Pacific Ry. Bldg.,
Saint Paul, Minnesota.

D. F. LYONS,
F. G. DORETY,
Of Counsel.

33–34 [*Duly sworn to by J. G. Morrison; jurat omitted in printing.*]

[File endorsement omitted.]

35 *Exhibit A to petition*

11329

Interstate Commerce Commission

Midcontinent Oil Rates, 1925

No. 15584 [1]

Sinclair Refining Company et al. *v.* Ahnapee & Western Railway Company et al.

Submitted December 22, 1925. Decided May 10, 1926

1. Proposals embodying changes in the oil-rate groups of the midcontinent field in Kansas, Missouri, Oklahoma, Arkansas, Louisiana, and Texas on traffic to and beyond Kansas City and St. Louis, Mo., disapproved.

[1] This report also embraces No. 15585, Miller Petroleum Company et al. v. Atchison, Topeka & Santa Fe Railway Company et al.; No. 16065, Barnsdall Refining Company et al. v. Louisiana & Arkansas Railway Company et al.; and No. 16066, North Texas Petroleum Traffic Bureau v. Same.

2. Reasonable and nonprejudicial rates or bases of rates on gasoline and other petroleum products now taking the same rates, in carloads, from points in Missouri, Kansas, Oklahoma, Arkansas, Louisiana, and Texas, to destinations in western trunk-line territory, Illinois, Indiana, and the northern peninsula of Michigan, found and prescribed. Proceedings held open for further consideration of rates to northern Nebraska, South Dakota, North Dakota, and northern Minnesota.
3. Basis of maximum reasonable rates on fuel oil and other low-grade petroleum products taking the same rates, in carloads, from and to the same points, prescribed.

George Patterson Boyle, Roy T. Osborne, and James F. Getty for complainants in No. 15584; James F. Lawrence for complainants in No. 15585; and Ed. P. Byars for complainants in Nos. 16065 and 16066.

Raymond L. Dillman, D. L. Kelley, and Dawes S. Brisbane for South Dakota Board of Railroad Commissioners and South Dakota Oil Jobbers' Association; J. E. Benton for South Dakota Board of Railroad Commissioners; E. M. Hendricks and D. L. Kelley for Board of Railroad Commissioners of State of North Dakota; Paul A. Walker and C. B. Bee for Corporation Commission of Oklahoma; and J. H. Henderson and Walter Condran for Board of Railroad Commissioners of State of Iowa.

Ed. P. Byars for North Texas Petroleum Traffic Bureau, Barnsdall Refining Company, Cosden & Company, Empire Refineries, Incorporated, Marland Refining Company, Producers & Refiners Corporation, Shaffer Oil & Refining Company, Tidal Refining Com-
36 pany, and Transcontinental Oil Company; George Patterson Boyle for Interstate Refineries, Incorporated, of Virginia and American Gasoline Corporation; H. D. Driscoll and H. E. Ketner for Oklahoma Refiners' Association, Chestnutt & Smith Corporation, Kettle Creek Refining Company, and Phillips Petroleum Company; William E. Rosenbaum, E. H. McCullock, and E. W. Sieboldt for Roxana Petroleum Corporation; H. L. McReynolds and L. R. Cowles for White Eagle Oil & Refining Company; E. H. Hogueland, Nathan Scarritt, and H. O. Glosser for Enid District Refiners; H. D. Driscoll for Ardmore Chamber of Commerce and Duncan Chamber of Commerce; A. W. Miller, J. D. Fields, E. M. Hinkle, J. C. Watkins, and W. S. Cornell for Oil Refiners' Division of Chamber of Commerce of Shreveport; Jas. J. Cosgrove, H. S. Garrett, T. E. Duggan, and Jas. J. Shaw for Texas Company; C. A. Talley for New Orleans Refining Company, Incorporated; U. S. Pawkett for San Antonio Freight Bureau, Elliott Jones & Company, Incorporated, Grayburg Oil Company, and Pioneer Oil & Refining Company; E. A. Starr for Texas Pacific Coal & Oil Company; F. E. Burke for Chestnutt & Smith Corporation; C. R. Musgrove for Phillips Petroleum Company; B. J. Burchett for Shaffer Oil & Refining Company; Henry Hause-

man for Pure Oil Company; W. B. Knight for Lion Oil Refining Company; P. L. Howard for Sun Oil Company and Sun Company; P. G. Anderson for El Dorado Chamber of Commerce; C. F. Dowd for Tidal Refining Company and Tidal-Western Oil Corporation; F. C. Clark for United Central Oil Corporation; J. L. Geraghty for Root Refining Company; J. R. Davis for Humble Oil & Refining Company; R. J. Wilkinson for Mexican Petroleum Corporation of Louisiana; J. B. Moore for Oklahoma Traffic Association; P. W. Coyle, D. A. Cole, J. C. Ryan, R. W. Ropiequet, W. C. Ropiequet, R. K. Keas, and U. E. McFarland for St. Louis Chamber of Commerce, Laclede Gas Light Company, Laclede Steel Company, Illinois Glass Company, and East Side Manufacturers' Association; W. H. Fitzpatrick for Commerce Club of St. Joseph, Mo.; Leo E. Golden for Burlington Shippers' Association, Fort Madison Chamber of Commerce, and Davenport Chamber of Commerce; John C. Fry for Keokuk Shippers' Association; L. M. O'Leary for Fort Dodge Chamber of Commerce; B. J. Drummond for Mason City Chamber of Commerce; A. B. Combs for Iowa Independent Oil Men's Association; and C. S. Bather for Rockford Manufacturing & Shipping Association, interveners.

H. W. Robertson for Sinclair Refining Company; L. D. Summerwell for Kansas City Refining Company; A. T. Sindel for
37 Kansas Oil Traffic Committee; A. F. Winn for Skelly Oil Company; H. G. Watts for Derby Oil Company; Mrs. E. K. Childers for Kanotex Refining Company; H. W. Roe for Cosden & Company; W. W. Klingensmith for Transcontinental Oil Company; C. L. Seideman for Kettle Creek Refining Company; H. C. Mulroy for Marland Refining Company; A. C. Holmes for Empire Refineries, Incorporated; and J. W. Liddell for Texahoma Oil & Refining Company.

J. N. Davis, F. E. Andrews, M. G. Roberts, Wallace T. Hughes, C. S. Burg, William E. Davis, H. H. Larimore, W. T. Faricy, H. A. Scandrett, K. F. Burgess, Elmer Westlake, P. F. Gault, L. H. Strasser, J. R. Turney, J. R. McClurken, C. S. Edwards, J. E. Monroe, A. F. Cleveland, Silas L. Egley, C. D. Arnold, B. C. Morgan, J. T. Quisenberry, and E. A. Smith for defendants.

Report of the Commission

Cox, Commissioner:

Exceptions were filed by complainants, defendants, and various interveners to the report proposed by the examiner, and the cases were orally argued. Our conclusions differ in some respects from those recommended by the examiner.

These related complaints, brought by operators of petroleum refineries located in Missouri, Kansas, Oklahoma, and Texas, were heard upon a consolidated record and will be disposed of in one report. Together they bring in issue the lawfulness under sections

1, 2, and 3 of the interstate commerce act, of the rates on petroleum products, in carloads, from points in Missouri, Kansas, Oklahoma, Arkansas, Louisiana, and Texas to western trunk-line territory and to Illinois, Indiana,[2] and the Upper Peninsula of Michigan. The establishment of lawful rates and relationships of rates is sought. Rates will be stated in cents per 100 pounds.

The specific allegations of the several complaints will later be outlined. At this point it will suffice to say that the consolidated proceeding embraces all of the rates on petroleum products from the Southwest to western trunk-line territory and the indicated additional territory to the east thereof. Interventions were filed by or on behalf of various refiners or shippers of petroleum products located at points throughout the origin territory. These interveners are so numerous and their interests so varied that it is not practicable here to enumerate them. In addition, interventions were filed on behalf of consumers of petroleum products at St. Louis and St. Joseph, Mo., and at points in Iowa, Illinois, North Dakota, and South Dakota. The primary issue is that of proper origin
38 relationships, although the questions of the reasonableness of the rates to particular destinations and of relationships of destination points are within the scope of the complaints.

OUTLINE OF RATE STRUCTURE, OIL DEVELOPMENT, PRODUCTION, ETC.

The territory of origin is for the most part divided into rate groups. The more important groups are Group 1, Kansas City, Mo., Atchison and Leavenworth, Kans., and St. Joseph; Group 2, embracing all other refining or shipping points in Kansas and also Joplin, Mo.; Group 3, extending across the State of Oklahoma and embracing all shipping points in that State, except Devol, which is in the extreme southwestern portion of the shipping area; the Burkburnett or north Texas group in northern Texas; the Ranger group in Texas immediately south and west of the north Texas group; the south Texas group, embracing Houston, Beaumont, Port Arthur, and other points in that vicinity; the New Orleans-Baton Rouge group in Louisiana; and the Shreveport-El Dorado group in Louisiana and Arkansas. There are in addition San Antonio and near-by points in Texas, Alexandria, La., and Fort Smith, Ark., which are of somewhat less importance as refining centers or points than are the groups just enumerated. The several groups are roughly described in Appendix 1. All of this origin territory, except possibly Group 1, is now known as the mid-continent field.

Rates or differences in rates shown in this section of the report are those on gasoline and other refined products taking the same rates.

The first important case in which rates on petroleum products between these territories of origin and destination were considered by

[2] Points in northwestern Indiana taking the Chicago, Ill., rates.

us was Midcontinent Oil Rates, 36 I. C. C. 109, hereinafter called the Midcontinent case. The mid-continent field as it was known at that time embraced 10 refining points in southeastern Kansas, or Group 2, and 16 refining points in northeastern Oklahoma, or Group 3. The average distances to St. Louis, an important destination and gateway, were, from the Kansas points, 394 miles, and from the Oklahoma points, 448 miles, the average from the two groups combined being 412 miles. The differences in the distances between the two groups, in favor of the Kansas group, were somewhat greater generally to Iowa and other States west of the Mississippi River.

An important feature of that case was the effort of the Oklahoma refiners to have the Oklahoma and Kansas points grouped together and accorded the same rates to all destinations. We prescribed a parity of rates from two groups to St. Louis and river points north thereof and to points east of the river, but the rates
39 prescribed from Kansas to points west of the river were somewhat lower than those prescribed from Oklahoma. The rates or bases of rates prescribed in that case are in force to-day subject to the general increases and reduction, with the exception that in Wadhams Oil Co. v. Director General, 57 I. C. C. 597, we found the rates to Milwaukee and Racine, Wis., unreasonable to the extent that they exceeded 3 cents over Chicago, Ill., thus modifying the basis of 5 cents over Chicago which was prescribed in the Midcontinent case. Kansas and Oklahoma take the same rates also to practically all points in Minnesota and North Dakota and some points in South Dakota.

At the time of the decision in the Midcontinent case there were three groups in Oklahoma in addition to Group 3, viz, the Enid group in the north-central part of the State, the Oklahoma City group, about the center of the State, and the Ardmore group in southwestern Oklahoma. Following the establishment of the rates found reasonable in that case, the rates from Oklahoma City and Ardmore were 2 cents and 5 cents, respectively, over Group 3. Enid became a refining point in 1917, and rates were established therefrom which were uniformly 1 cent over Group 3. After the general increase of August 26, 1920, these arbitraries were 1.5 cents from Enid, 2.5 cents from Oklahoma City, and 7 cents from Ardmore. In May, 1921, the Enid group was consolidated with Group 3, and in August, 1922, the Group 3 basis was finally extended to practically all shipping points in the State, the only exception now being Devol, which takes 1 cent over Group 3. Group 2 also was extended at various times until it now includes Arkansas City and Hutchinson, Kans., on the west. These enlargements of the groups, which resulted from commercial and carrier competition, were the equivalent of reductions in the group rates as applied to the increased distances.

In the meantime complaint had been filed in Western Petroleum Refiners' Asso. v. Director General, 66 I. C. C. 426, decided Febru-

ary 21, 1922, attacking the rates from the Burkburnett and Ranger groups and from the Shreveport district to western trunk-line territory. Based upon that record, which did not include a complete development of the competitive conditions affecting the oil traffic, we prescribed reasonable maximum rates from the Burkburnett and Ranger groups which were, respectively, 9 and 13 cents higher than the rates from Group 3. We also approved rates from Shreveport which were somewhat higher than those from Group 3. After the hearing in that case Group 3 was extended to the southern boundary of Oklahoma, as explained above. Because of that fact and of the competitive conditions, the carriers serving the Burkburnett and Ranger groups decided that they could not maintain rates from those groups higher than 2.5 cents and 5.5 cents, respectively, over Group 3, which bases were established on October 8, 1922, in lieu of the rates found reasonable in that case. The lines serving the Shreveport-El Dorado group decided that the rates from that group should not exceed those from Group 3, and established that basis on the date last mentioned. The rates from New Orleans and group points to St. Louis, Chicago, and intermediate points are also on the Group 3 basis. They generally are higher to other points, except certain points in southern Illinois, to which New Orleans has a lower basis than Group 3, as has also the Shreveport-El Dorado group.

In Petroleum from Texas Points, 77 I. C. C. 228, we found justified the proposal of the lines serving the south Texas group to reduce the rates from that group to the basis of 2.5 cents over Shreveport, which change became effective in March, 1923. The rates from San Antonio were the same as those from south Texas prior to that time. As a result of that reduction, San Antonio is now generally 2.5 cents over south Texas or 5 cents over Group 3.

The competitive conditions have resulted in practically but two origin blankets on traffic to St. Louis and Chicago, the rates from Kansas, Oklahoma, Arkansas, and Louisiana being the same, and those from the north Texas, Ranger, and south Texas groups 2.5 cents higher. There are two natural gateways through which the traffic from the Southwest moves, namely, Kansas City and St. Louis, and the rates to points beyond are related to the rates to those gateways. Except to some points east of the Mississippi River, however, St. Louis is not a gateway for traffic originating at Kansas City, from which point the routes generally radiate to the different destinations.

The foregoing indicates the close rate relationships which exist between the origin groups. A possible exception is in the instance of the rates from Kansas City, or Group 1. The rates from this group are lower by varying amounts, depending upon the destination, than those from the nearest mid-continent group, viz, Group 2, and are actually the lowest, although relatively the highest, rates here under consideration. Apparently they have never borne a

definite or fixed relationship to the mid-continent adjustment, and have never been passed upon by us.

Appendix 2, which is compiled from the record, shows the average distances and the rates from the several groups to representative destinations. The distances shown are, with the exceptions indicated, those via the short tariff routes. In some instances the rates are grouped over substantial destination areas. The main
41 reason for this is that when the rates prescribed in the Mid-continent case to so-called key points were established they were applied as maxima at many intermediate points, although some of the groups were approved by us, as for example, the Chicago group described at page 119 of the report in that case. The groups accordingly extend generally from the so-called key points back toward the origin territory. A noticeable instance of this is the application of the St. Louis rate at intermediate points in a blanket extending across the State of Missouri nearly to Kansas City territory.

As is well known, this southwestern territory is one of enormous oil resources. Its crude production is more than half that of the entire country, being 51.74 per cent of the total of 725,702,000 barrels for the year 1923, and an average of 56.32 per cent of the total for the nine years ending with 1923. Of the several States which it embraces, Oklahoma and Texas lead in production, the former having produced 22.03 per cent and the latter 17.69 per cent of the country's total in 1923. The percentages for Kansas, Arkansas, and Louisiana in the same year were 3.85, 4.75, and 3.41, respectively. The production in this territory has increased enormously since the Midcontinent case was decided in 1915.

There are approximately 345 refineries located at various points throughout this territory, with an aggregate daily capacity of 1,198,775 barrels. These figures do not include four refineries at Kansas City of 16,200 barrels daily capacity. In addition, there are in excess of 500 casing-head or natural gasoline plants, located principally in Oklahoma and in the north Texas and Ranger groups in Texas. This industry has come into existence practically in the last decade and represents a large investment. Natural gasoline is a highly volatile product recovered from "wet" gas and is used for blending with lower grades of petroleum products to produce a gasoline of suitable gravity for commercial use. Generally, it is shipped for comparatively short distances to blending plants, but the record shows that there are movements to many points in the destination territory here considered. It takes the gasoline rates.

The territory of origin, excluding Kansas City, has a refining capacity of 41.75 per cent of that of the entire country, while it consumes only about 10.5 per cent of the total. On the other hand, the destination territory consumes 22.5 per cent and has a refinery capacity of but 4.5 per cent of the total. The importance of western trunk-line territory as a market for these southwestern refiners is

thus apparent, and the competition among them for this business is keen, as is partly evidenced by the wide interest display in these proceedings.

42 Prices of gasoline are uniformly quoted on the Tulsa, Okla., or Group 3 basis. That is, regardless of the point of shipment, the delivered price quoted is that obtaining at Tulsa plus the freight from Tulsa. Hence, whenever the rate from the point of shipment is less than that from Tulsa, as from Group 2 to certain parts of the destination territory, the shipper profits by the amount of the difference in freight; but where the rate exceeds that from Tulsa, the shipper must absorb that difference. For these reasons Group 3 is regarded as the base group in this adjustment, and the rates from other groups are generally viewed in their relation to the rates from that group. It is said that the margin of profit is narrow, and that a difference in price of as little as a sixteenth of a cent a gallon may be sufficient to divert a sale. The quality of the crude oil from the different pools or fields varies in some instances, and this may affect the costs of operation as between different refineries. Generally speaking, the only other element of difference is that of distance. The commercial practice outlined and the keen competition, which have led to demands of shippers for rates on an equality with Group 3 or as near thereto as possible, necessarily have had an effect upon the rates, and as a consequence distance may be said to be a minor element in the adjustment which has developed.

Another element which has an influence upon the level of the rates which the rail carriers may maintain from this territory is that of pipe-line competition. All important crude-oil sources in the Southwest are served by pipe lines which extend to Kansas City, St. Louis, and Chicago. These pipe lines serve refineries at or in the vicinity of the points named, and the carriers must take into account the competition of these refineries, located near the market, which draw their crude oil in at less than the cost of rail transportation, and maintain rates which will enable the refiners located in the producing area to ship by rail and meet that competition.

Petroleum products move in tank cars furnished by the shippers and on which the carriers pay a mileage allowance of 1.5 cents for the loaded and empty movement. The empty movement averages at least 100 per cent. Conflicting contentions are advanced by shippers and the carriers as to the respective costs to them of operating under this arrangement. However, the arrangement simplifies the matter of furnishing or obtaining adequate equipment, and appears to be mutually advantageous to both the shippers and the carriers.

THE ISSUES

The complaints in Nos. 15584 and 15585 assail the rates from Groups 1 and 2, respectively, as unreasonable and unduly
43 prejudicial, principally in comparison with the relatively lower rates from groups to the south thereof. They seek

increased differentials, or differentials where none now exist, under Group 3.

In No. 16065, brought by refiners located in northeastern Oklahoma, complaint is made against the rates from the entire producing territory, alleging particularly that the present adjustment results in unreasonable and unduly prejudicial rates from points in that portion of northeastern Oklahoma approximating the area embraced in Group 3 as it existed at the time of the decision in the Midcontinent case. The allegations in No. 16066, brought by refiners in the Burkburnett group, are the same as those in No. 16065, except that the rates from that group in particular are alleged to be unreasonable and unduly prejudical. The evidence in these two complaints was jointly presented, and in connection therewith was submitted a proposal for regrouping the origin territory, together with some changes in rate relationships, which it is contended would accord the shippers in northeastern Oklahoma and north Texas the advantages to which they are entitled.

The defendants, conceding that the present adjustment is indefensible from the standpoint of relative distances, also have proposed a rearrangement of the origin groups together with a revised rate adjustment, which would result in increases in the rates from territory south of Kansas, in some instances substantial, and in many material increases in group differentials. Their position amounts to an admission of some merit in the Group 1 and Group 2 complaints under the present conditions. They, however, would correct the situation by increases from the groups alleged in these complaints to be preferred, instead of by reductions from Groups 1 and 2. They also propose for application to the so-called low-grade products, such as fuel oil, in lieu of the fixed basis under gasoline which has been prescribed by us in a number of cases, rates which shall bear a percentage relationship, as a maximum, to the gasoline rates.

The thought is suggested by certain of the parties that, if consideration of the evidence offered in support of the complaint in No. 15585 should lead to the conclusion that Group 2 is not entitled to a differential under the present Group 3 at St. Louis, the proceedings should be dismissed, for the reason that the affirmative proposals above outlined are submitted in rebuttal or defense of that complaint, and because other parties are claimed to be generally satisfied with the present adjustment. The Oklahoma and Texas complaints are directed against the entire adjustment, and go beyond a mere rebuttal of the Kansas complaint by asking for the removal of differentials under northeastern Oklahoma which Kansas now has. De-
430 fendants contend that the present adjustment is out of line and requires revision. In addition, there are features of the present adjustment which require examination regardless of whether or not the Kansas complaint shall prevail. All of the proposals and contentions should have consideration to the end that, as far as possible, the questions raised may be put at rest and the origin adjustment left free from probable future attacks or changes.

The most logical order would be to dispose of the proposed group changes at the beginning, to be followed by a consideration of the rates. That method is not wholly feasible, however, because the proposed groups and the accompanying plans of rate adjustment are so related one to the other that they must be developed together, and also because the complaints in Nos. 15584 and 15585 are predicated upon the present origin groupings. The evidence and contentions will be developed along general lines until the point is reached where a determination may be made as to what changes, if any, should be made in the origin groups; after which further consideration will be given to the rates from the groups approved.

The record contains a large number of computations of actual and average distances. These have been figured on various bases by the different proponents thereof. The distances and averages used by the Kansas City and Kansas complainants are those over the short tariff routes from refining points only. Those used by the Oklahoma and Texas complainants are figured via the shortest routes, regardless of tariff application, from all refining or natural gasoline shipping points. Defendants have figured the distances from all refining points over the shortest routes embracing not more than three lines except where a greater number are necessary to form a route. Other parties generally have used what purport to be the short-route distances. The principal question in this connection pertains to the comparative distances from the different present or proposed groups. It has not been found practicable in this report to adopt any one method for exclusive use, because none of the parties has computed a complete range of average distances from all present and proposed groups. The different bases used will be indicated.

The rates on gasoline and other products taking the same rates will first be considered.

THE COMPLAINTS IN NOS. 15584 AND 15585

The evidence of the complainants in these cases is generally along the same lines. The rates from Groups 1 and 2 are assailed as unreasonable and unduly prejudicial in comparison with the rates
431 from other groups, with rates on oil in other sections, and with rates on other commodities in the same and other sections. An important contention is that the rates from these groups in comparison with rates from other groups, especially Group 3, deprive the shippers therein of the advantage of location and proximity to this consuming market to which they are entitled. The principal interest of the complainants in Group 2 is to secure what they assert would be proper relationships to Group 3. These complainants would be satisfied if such relationships were brought about by increases from Group 3, but they do not advocate that method. The Group 1 complainants, although dealing extensively with the question of the alleged unlawfulness of the relationships between the rates from that

group and from Groups 2 and 3, strongly urge the unreasonableness of the rates from Group 1, and endeavor to prove that the relationships sought by them should be brought about by reductions from that group.

A point emphasized in support of these complaints is the fact that since the Midcontinent case was decided the extension of Group 3 southward has increased the excess of the average distance from that group over those from Groups 1 and 2. This changed condition is relied upon especially by the complainants in Group 2 because of the relationships or parities of rates from Groups 2 and 3 which were prescribed in that case based upon the conditions then existing. The table below shows to several destinations which are sufficiently illustrative the present average distances from refining points in Groups 1, 2, and 3, the present differences in the respective average distances of Groups 1 and 2 under Group 3, the differences at the time of the decision in the Midcontinent case, and the miles by which such differences have been increased since that decision. The present distances shown are figured over the short tariff routes.

To	Present average distance			Group 1 under Group 3			Group 2 under Group 3		
	From Group 1	From Group 2	From Group 3	At time of *Midcontinent* decision	Present	Increase	At time of *Midcontinent* decision	Present	Increase
	Miles	*Miles*	*Miles*	*Miles*	*Miles*	*Miles*	*Miles*	*Miles*	*Miles*
Kansas City, Mo		161	339				101	178	77
St. Louis, Mo	278	417	549	170	271	101	54	132	78
Chicago, Ill	452	613	784	252	332	80	98	171	73
St. Paul, Minn	483	644	822	261	339	78	107	178	71
Des Moines, Iowa	218	365	539	251	321	70	100	174	74
Omaha, Nebr	196	345	518	253	322	69	105	173	68

46 Enlargements of origin groups in Arkansas, Louisiana, and Texas, and reductions in rates therefrom at various times, have operated similarly to bring about a situation in which the rates from Groups 1 and 2 are now relatively higher in comparison with the rates from such groups than they formerly were.

Extensive comparisons are made by these complainants of the rates from Groups 1 and 2 with those from Group 3 and other groups upon various actual and percentage bases. The rates and average distances from the different groups to representative destinations have been shown in Appendix 2. Appendix 3 shows in illustrative instances the percentages which the distances and the rates from Group 1 are of the distances and rates from the other principal groups, and, using the converse method of comparison employed by the complainants in Group 2, the percentages which the distances and rates from other groups are of those from Group 2, the actual differences between the distances and the rates, where

differences in rates exist, from Groups 1 and 2 on the one hand and Group 3 on the other hand, and the differentials under Group 3 which the complainants propose. The differentials proposed by the Group 2 complainants are based upon a plan of dividing the destination territory into several differential groups [3] with a slight downward grading of the differentials to the farther distant groups.

It will be noted from Appendix 3 that the percentages which the distances from Groups 1 and 2 are of those from the other groups shown are much lower than the percentages which the rates from those groups are of the rates from the other groups, showing that the rates from these complaining groups are relatively the highest in the adjustment, and that the disparities increase as the distance from the compared groups to the south increase the average distance and rate from Group 1 to St. Louis, for example, being 49.7 per cent and 88.1 per cent, respectively, of those from Group 3, as compared with 32.9 per cent and 81.3 per cent, respectively, of the distance and the rate from the south Texas group.

Along the same lines complainants have compared the oil-rate adjustment in this territory with the fifth-class adjustment. The table below shows, to representative destinations, the percentages which the average fifth-class rates and the oil rates from Groups 1 and 2 are of those from the other groups or points shown.

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Group relation	To Des Moines, Iowa		To Omaha, Nebr.		To St. Louis, Mo.		To Chicago, Ill.	
	Oil rate	Fifth class	Oil rate	Fifth class	Oil rate	Fifth class	Oil rate	Fifth class
Group 1 to—	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*
Group 2	81.4	54.3	81.4	59.2	88.1	54.3	90.3	59.5
Group 3	72.7	36.2	71.6	39.1	88.1	36.2	90.3	41.5
North and south Texas	67.6	27.9	66.7	27.9	81.3	29.3	84.4	33.3
Group 2 to—								
Group 3	89.4	64	88	62.5	100	62.5	100	66
El Dorado	89.4	56.4	88	53.4	100	65.7	100	66.4
Shreveport	89.4	51.1	88	48.4	100	55.8	100	57.4
Beaumont [1]	83.1	46.9	81.9	45.4	92	51.6	93.5	53.1

[1] Used as representative of south Texas.

As will readily be seen, the relationships in the oil-rate adjustment are much closer than in the class-rate adjustment. It will also be apparent that the relationships of the oil rates to the class rates from Groups 1 and 2 are closer than from the other groups. For example, to 36 representative destinations the average percentages which the oil rates are of the fifth-class rates are shown to be from Group 1, 82.6; from Group 2, 55.9; from Group 3, 39.1; and from the north and south Texas groups combined, 31.8 per cent.

[3] The differentials and a rough description of the groups are as follows: 6.5 cents at Kansas City, as at present; 6 cents at points in adjacent territory in northwestern Missouri; 5 cents at all points in Nebraska, Iowa, except a narrow strip along the northern and eastern borders, and northeastern Missouri; 4 cents at all points in South Dakota, North Dakota, Minnesota, the portions of Iowa not included in the 5-cent group above described, and a portion of northwestern Wisconsin; 2.5 cents at St. Louis and contiguous points along the river and in southern Illinois; and 3 cents at points in the remaining portions of Illinois and Wisconsin.

The complainants' purpose in making these class-rate comparisons is to show the relative transportation conditions from the several groups as reflected thereby. They do not contend that the oil-rate adjustment should bear any fixed percentage relationship to the fifth-class adjustment, or that the oil rates from the several groups should be related by the same percentages as are the class rates, but they do contend that the differences in conditions in their favor as reflected by the class-rate adjustment warrant the differentials on oil traffic which are sought. The value of comparisons with fifth class is greatly impaired by the higher percentage relationship of fifth class to other classes that generally exists in the Southwest than in western trunk-line territory. We have frequently commented on the fact that fifth-class rates in the Southwest move little traffic, most articles rated fifth class which move in appreciable volume being subject to commodity rates lower, and often much lower, than the class rates. This situation exists to a much greater degree in the Southwest than in western trunk-line territory. Complainants further support this contention by comparisons of the oil-rate relationships with those on other commodities. The Group 1 complainants, for example, show that the commodity rates from Kansas City to western trunk-line destinations on various commodities, including burlap bags, roofing paper, sulphate of copper, sulphate of zinc, salt cake, and starch, are lower percentages of the class rates which would otherwise be applicable than are the oil rates from that point, and, on basis of the minimum weights, yield lower
48 car-mile earnings. Similarly, the Group 2 complainants compare the average rates from that group with those from Group 3 to St. Louis and other points on various commodities, including wheat, agricultural implements, lime, cement, canned goods, brick, and scrap iron. These comparisons show that, while the oil rates are the same from the two groups to St. Louis and points beyond, the rates on the other named commodities are 3.5 to 31.7 cents lower from Group 2 than from Group 3, and that the percentages which the rates from Group 2 are of those from Group 3 range from 56.6 to 88.6.

Such comparisons may have a bearing upon the question of the measure of the rates but they are of questionable value in reaching a determination as to what are proper differentials or group-rate differences on oil, for the record shows that this commodity is subject to many influences which do not exist as to traffic generally.

Appendix 4, which is a counterpart of Appendix 2, shows the ton-mile and car-mile earnings under the present rates from the several origin groups, and, in comparison therewith, the rates proposed from Group 2 by the complainants in that group, which reflect the differentials sought by them, and the earnings thereunder, also rates from Group 1 which have been computed on the basis of the present Group 3 rates and the differentials which the Group 1 complainants seek, and the earnings thereunder. The car-mile earnings are

based on a load of 8,000 gallons per car at the estimated weight of 6.6 pounds per gallon, or 52,800 pounds. The rates proposed would still be relatively higher than the rates from other groups.

Rates from Groups 1 and 2 based on the distance or fifth-class relationships between those groups and Group 3 would be much lower than those sought and shown in this appendix. The proposed differentials from Group 1 as shown in Appendix 3 are those proposed by the complainants in that group at the hearing. On brief they contend that they are entitled to more favorable rates than were there proposed. They offer two bases of rates, (1) alleged reasonable maximum rates, considering the haul from Group 1 independently of that from Group 3, and (2) alleged reasonable minimum differentials under Group 3, considered independently of the volume of the rate. These are briefly illustrated below.

From Group 1 to—	Reasonable rate	Reasonable minimum differential under Group 3
	Cents	*Cents*
Des Moines, Iowa	16	15
Sioux Falls, S. Dak	25	10
St. Louis, Mo	18	12.5
Chicago, Ill	26	10
St. Paul, Minn	30	10

49 These suggested differentials are more evenly graded than are those proposed at the hearing, being in some instances higher and in others lower. The reasonable rates suggested are in some instances lower than the proposed differentials would produce, using the present Group 3 rates.

The foregoing outlines in a general way the rate adjustment under review and the main theory upon which these two complaints were brought. It is readily apparent, as has before been stated, that this adjustment of oil rates is not constructed upon a basis which takes into full account the relative transportation conditions. These complainants, although much of their evidence consists of comparisons of rates and distances from this territory in their relation to each other, do not contend that distance is the only guiding element, but would recognize advantages or disadvantages of location as reflected by differences in average distances in relating the groups one to another. A point which the complainants in Group 2 suggest is that if the differentials of other groups over Group 3, as for example that of 2.5 cents from north Texas, are warranted, the differentials under Group 3 as proposed by them are proper in view of the shorter distances concerned.

Dealing further with the measure of the rates from Kansas City, the complainants in Group 1 have compared the rates assailed with various lower rates on the same commodity between points in the Southwest and from Chicago, East St. Louis, Ill., and other points to points in western trunk-line and central territories, and with the

Kansas, Oklahoma, and Arkansas scales. The scales last mentioned appear to be low, and many of the exhibited rates between points in the States in which they apply are based on those scales. The comparisons include rates from points in other mid-continent origin groups to western trunk-line points. As before stated and shown, the rates from groups to the south of Group 1 are relatively lower than the rates from that group, and in view of the conditions under which the adjustment has developed, comparisons of this kind are of little weight as bearing upon the measure of the rates from Kansas City. The exhibited rates from Chicago, East St. Louis, and related points are in the larger number of instances to points in Illinois, and are on the central-territory basis, which is lower than that generally prevailing between western trunk-line points. A comparatively few instances are shown of rates from these points to western trunk-line points on and east of the river which are lower than the compared rates from Kansas City.

These and other complainants have made comparisons of rates here in issue with rates on oil from Wyoming points to the same destination territory which are lower, considering the distances, the conditions, and the relationships to the fifth-class rates. The rates from Casper, for example, which is the Wyoming point principally referred to, were, according to defendants, established to enable the Wyoming refiners to meet competition from the Southwest. The rate of 36 cents to Omaha, for instance, for a distance of 632 miles, is also applied at intermediate stations to within 148 miles of Casper. Normally the rate from Casper to Omaha and Sioux City, Iowa, is the same, but as the competition is less keen at Sioux City than at Omaha, a rate of 39.5 cents on oil is maintained to the former point.

These complainants and other parties have made comparisons of rates in issue with rates on linseed oil, which moves in tank cars. The rates exhibited on that commodity are lower than those on petroleum oil for comparable distances, although the former is of much greater value. The reasons for these comparatively low rates on linseed oil are not fully explained.

THE COMPLAINTS IN NOS. 16065 AND 16066

The filing of the complaints in these cases was occasioned largely by the previous filing of the complaint in No. 15585 against the relative adjustment from Kansas and Oklahoma. The Kansas complainants take the position, as has been seen, that the extension of Group 3 and the consequent increases in the average distances therefrom over Group 2 entitle them to a more favorable adjustment of rates than the present one. The complainants in No. 16065 take the position, on the other hand, that such extension and increases have deprived them of the advantages of their location in the area embraced in Group 3 as it existed at the time of the decision in the Midcontinent case. The contentions of the complainants in these

two cases are that the Kansas refiners are not injured by the present relationships between the rates from Groups 2 and 3, that the rates from Group 2 and from northeastern Oklahoma to northern Missouri, Iowa, and Nebraska, to which territory the rates from Kansas are differentials under those from Oklahoma, unduly prefer Kansas to the undue prejudice of Oklahoma, and that the rates from northeastern Oklahoma to such territory are unreasonable, that the rates from the Shreveport-El Dorado group unduly prefer that group to the undue prejudice of northeastern Oklahoma and north Texas, that there are no conditions which warrant higher rates from northeastern Oklahoma than from Kansas or from north Texas than from the Ardmore district in southern Oklahoma, and
51 that Group 3 should never have been extended in Oklahoma beyond its original bounds, or its rates extended to points in Arkansas and Louisiana.

As a remedy for these alleged unlawful situations these complainants jointly presented proposals for regrouping the origin territory and for revising the rates from portions thereof. The proposed group arrangement, which is described in Appendix 1, would give them more favorable distance relationships than they now have. It is proposed to continue the present grouping of the Kansas points; to restore the Tulsa or base group to approximately its area in northeastern Oklahoma at the time of the decision in the Midcontinent case; to create an intermediate group in central Oklahoma; to group together the Ardmore district in southern Oklahoma and a portion of the present north Texas group; and to place El Dorado and Shreveport in separate groups. It will be observed that under this proposal the northeastern Oklahoma and north Texas groups have been drawn in on the south and extended in the direction of the destination territory, the northeastern Oklahoma territory being combined with the present Group 2, except as hereinafter indicated, with consequent decreases in the average distances from the northeastern Oklahoma and north Texas areas embraced in these proposed groups and increases in the averages which would be applied from the present Group 2 and from the Ardmore district.

The entire plan apparently is built largely around the proposal to restrict the area of Group 3 to points in northeastern Oklahoma. This proposal, which would separate north Texas from the Tulsa or base group by an intermediate group, appears to have rendered desirable a similar shifting of the group embracing north Texas in the same direction in order to avoid creating too great a disparity between the distances from that group and from the base group and to justify the retention from north Texas of the present basis of 2.5 cents over Tulsa. Another purpose was to reduce the differences between the average distances from north Texas and the Shreveport district, which is to be accomplished, as indicated above, partly by reducing the average distances from north Texas and partly by separating Shreveport from the Arkansas points with which it is now grouped and thus increasing the average distances

from the Shreveport district. Other proposed changes incidental to the rearrangement of the groups are the extension of the south Texas group on the west to include San Antonio and some enlargement of the Ranger group on the north and south.

52 The table below, which is compiled from the record, shows the average short-line distances [4] from the several proposed groups to representative destinations; also the separate average distances from the respective points in Oklahoma and Texas which comprise the proposed Ardmore-north Texas group, which comparisons apparently are intended to show the small differences in distances from the two sets of points as justifying their inclusion in one group.

From—	To St. Louis, Mo.	To Chicago, Ill.	To Milwaukee, Wis.	To St. Paul, Minn.	To Kansas City, Mo.	To Des Moines, Ill.	To Omaha, Nebr.
	Miles	*Miles*	*Miles*	*Miles*	*Miles*	*Miles*	*Miles*
Group 2	407	634	700	664	174	395	329
Northeast Oklahoma group	451	694	752	745	254	475	428
Enid-Oklahoma City group	573	780	824	822	332	552	479
Ardmore group	639	891	931	924	448	666	575
North Texas group	656	918	979	976	493	712	657
Ardmore-north Texas group	649	907	959	954	474	692	623
Ranger-Waco group	777	1,039	1,095	1,096	605	826	754
South Texas group	795	1,084	1,154	1,245	752	975	942
El Dorado group	569	703	775	1,020	595	795	775
Shreveport group	483	789	874	1,068	571	798	770
New Orleans group	693	926	1,011	1,261	854	1,028	1,044

The following tabulation, based on the figures used above, shows the differences in average distance from the proposed groups with which the complainants are principally concerned to the same destinations:

From—	To Kansas City	To St. Louis	To Chicago	To Milwaukee	To St. Paul	To Des Monies	To Omaha
	Miles	*Miles*	*Miles*	*Miles*	*Miles*	*Miles*	*Miles*
Group 3 over Group 2	80	44	60	52	81	80	99
Enid-Oklahoma City group over Group 3	78	86	86	72	77	77	51
North Texas-Ardmore group over Enid-Oklahoma City group	142	112	127	135	132	140	144
North Texas-Ardmore group over Group 3	220	198	213	207	209	217	191
North Texas-Ardmore group over Shreveport group	[1] 97	80	118	85	[1] 114	[1] 106	[1] 147
Shreveport group over Group 3	317	118	95	122	323	323	342

[1] Under the Shreveport group.

The average short-line distances to St. Louis, for example, at the time of the decision in the Midcontinent case, were 394 miles from Group 2, 448 miles from Group 3, or 54 miles greater than from Group 2, and 412 miles from the two groups combined. Using the

[4] The complainants in these cases have computed all distances used by them over the shortest possible routes. They have shown of record some 75,000 separate distances upon which the averages are based. Defendants, without making a complete check of these distances, have pointed out errors in some of them, due principally to the fact there were no track connections at the junction points used.

present Group 2 and complainants' proposed northeastern Oklahoma group, the averages are 407 miles from Group 2, 451 miles
53 from Group 3, or 44 miles over Group 2, and 442 miles from the two groups combined. Comparison of these figures will show that the present average distance from Group 2 is 13 miles greater than it was in 1915, while the average from the proposed northeastern Oklahoma group is but 3 miles greater than was the average from Group 3 as it existed at that time. Complainants have made like comparisons to other points for the purpose of similarly showing that the average distances from Kansas have increased to a greater extent than have those from northeastern Oklahoma, thus bringing the averages from Group 2 and their proposed northeastern Oklahoma group nearer together and, as they contend, justifying a parity of rates. For example, to Chicago the difference in distance of Group 2 under Group 3 in 1915 was 98 miles, for which no difference in rates was prescribed in the Midcontinent case, whereas the difference of Group 2 under the proposed northeastern Oklahoma group would be 60 miles. The differences in distances between Groups 2 and 3 in 1915 and as they exist to-day to several representative points are shown in a previous section of this report. It is manifest that if the approximate area of the original Group 3 is used in contrast with the present enlarged Group 2, which method of comparison opposing parties assail as illogical and unsound, decreases in the differences in distances will be shown. These comparisons, and the purpose for which they are made, are based on the assumption that Group 3 should be restored to its original size, the propriety of which must itself be established.

In this connection, these complainants criticize the use of other than short-line distances. Although exhibiting the short-line distances from each origin point, they did not place in evidence computed averages based thereon from the present origin groups. Such computations were, however, made by them as to Groups 1, 2, and 3 for use in their exceptions to support the contention that the use of average distances over the shortest tariff routes produces inaccurate and unfair comparative results. These show, for example, somewhat lower differences in average distances of Group 2 under Group 3 than appear in the first table shown in this report. That table shows the present differences in average distances of Group 2 under Group 3 to be 132 miles at St. Louis and 171 miles at Chicago. The respective differences computed by these complainants based on their short-line distances are 74 and 92 miles. Distances over the short tariff routes have a closer relation to the actual distances traversed in the movement of the traffic than do the strict short-line distances, and we are of the opinion that averages based on the former method may fairly be used for comparative purposes herein.

Of the 16 refining points comprising Group 3 when the Mid-
54 continent case was decided, 8 are refining points at the present time. The average short-line distance from these eight points to St. Louis, as shown by that decision, was 449 miles. The present

average distance from the same points over the short tariff routes, as shown by this record, is 452 miles. This indicates that the figures in the table referred to showing increases in the average differences in distances of Groups 1 and 2 under Group 3 may fairly be used.

The Oklahoma complainants assert that they are entitled to the benefit of their location and should not be penalized with rates based upon the average distances from the present greatly enlarged Group 3 simply because competitive conditions have forced such enlargement upon the carriers. Their position in this respect is based in part, if not largely, on the fact that the portion of northern Oklahoma which they would separate from the rest of the State is approximately the area of Group 3 as dealt with and approved by us in the Midcontinent case; and they state that in circumscribing the proposed group they followed as nearly as possible the boundaries of the group as it existed at that time, having in mind that from the remainder of Oklahoma the rates were originally higher than from Group 3. In this connection consideration must of course be given, as will later be done, to the question of whether or not a group which existed when the Midcontinent case was decided in 1915, would necessarily be a proper group at the present time in view of the changes in the conditions which have since occurred, such as development of new oil pools and fields and enlargement in general of the area of oil production, and the consequent expansion of the refining industry.

Complainants contend that Group 2 and northeastern Oklahoma are a continuous producing area and should not be arbitrarily placed in separate groups by an imaginary State line, and that their proposed northeastern Oklahoma group and the present Group 2 should take the same rates to all points beyond the Kansas City group and points in the vicinity thereof not more than 215 miles distant from Group 2. Under this proposal the parity of rates would begin at Sedalia, Mo., to which point we prescribed such a parity in the Midcontinent case. They concede that Group 2 properly may have lower rates to the near-by points and do not object to the present difference of 6.5 cents at Kansas City. The adjustment to the Mississippi River and points east thereof, and points west of the river which are grouped with the river points, now conforms to this plan and accordingly the complainants would make no changes in the rates from northeastern Oklahoma or from Group 2 to such points. To
55 points in northern Missouri, Iowa, and Nebraska, to which the rates are now lower from Kansas than from Oklahoma, they would bring about an equalization by approximately corresponding reductions from the proposed northeastern Oklahoma group and increases from Group 2. They would then make the rates from the proposed Enid-Oklahoma City or central Oklahoma group 1 cent over northeastern Oklahoma, and from the proposed Ardmore-north Texas group 1.5 cents over the central Oklahoma group, thus preserving the present 2.5-cent differential of north Texas over the Tulsa base group. Thus, while Enid and Ardmore are now on

the Tulsa basis, they would, under this plan, be 1 cent and 2.5 cents, respectively, over Tulsa. No specific adjustments of rates are proposed from the remaining proposed groups, but the proposed rearrangement of the Shreveport-El Dorado group is designed to support the contention that the present Group 3 basis generally applying from Shreveport, which is 2.5 cents under north Texas, is unwarranted and unduly prejudicial to the latter group.

The table below shows to several representative destinations the present differences between the average distances and the rates from the Shreveport-El Dorado group, on the one hand, and Group 3 and the north Texas group, on the other hand, and, in comparison therewith, the differences in distances which would obtain under the proposed groupings. The present differences are based on the distances used in Appendix 1, while those under the proposed groups are arrived at by using the short-route distances employed by these complainants.

To—	Present difference, Shreveport-El Dorado				Proposed El Dorado group over proposed northeastern Oklahoma group	Proposed Shreveport group over proposed Ardmore-north Texas group
	Over Group 3 (distance)	Over Group 3 (rate)	Under north Texas (distance)	Under north Texas (rate)		
	Miles	*Cents*	*Miles*	*Cents*	*Miles*	*Miles*
St. Louis, Mo	[1] 10	[2] 0	220	2.5	32	[1] 80
Chicago, Ill	34	[2] 0	153	2.5	9	[3] 118
Milwaukee, Wis	50	[2] 0	139	2.5	23	[1] 83
St. Paul, Minn	212	[2] 0	[4] 26	2.5	275	114
Kansas City, Mo	234	5.5	[4] 49	[2] 0	341	95
Des Moines, Iowa	340	15	[4] 41	[4] 12.5	320	106
Omaha, Nebr	255	[2] 0	[4] 54	2.5	347	147

[1] Under Group 3. [2] Rates the same. [3] Under north Texas. [4] Over north Texas.

A study of this table will show that to St. Louis and points beyond there now are generally no great disparities between
56 the average distances from the Shreveport-El Dorado group and Group 3, but that to Kansas City and points beyond substantial differences exist in favor of Group 3. As will also be seen, the average distances from the Shreveport-El Dorado group are somewhat less than those from the north Texas group to St. Louis and points beyond. The reverse is true, however, to points west thereof. Under the proposed rearrangement of the groups, the distance relationships between the proposed northeastern Oklahoma group and the proposed El Dorado group to St. Louis and points beyond would not be materially different from those existing between the present groups, although slight changes in the differences will be noticed. To Kansas City and points beyond the differences in distances in favor of the proposed northeastern Oklahoma group would in most instances be somewhat greater than the differences existing between the present groups. The relationships between the proposed

north Texas-Ardmore and Shreveport groups would generally be more favorable to the north Texas complainants than are the relationships between the present north Texas and Shreveport-El Dorado groups.

Complainants exhibit many instances in which the distances from particular points in northeastern Oklahoma and in northern Texas are less than those from particular points in Groups 2 and 3, respectively, which are intended to show the impropriety of the present and to support the proposed groupings. For example, of the 100 refining or natural-gasoline shipping points in the proposed northeastern Oklahoma group the number which are less distant to St. Louis than is Arkansas City, Kans., is 88; Hutchinson, Kans., 78; and Wichita, Kans., 68. These are, respectively, the three most distant points in Group 2 from St. Louis. The same character of comparisons is made to other destinations, as for example, that there are 46 points in the proposed northeastern Oklahoma group which are less distant to Chicago than is Arkansas City. The number of such instances declines with the use of the nearer points in Group 2. In the north Texas group there are 17 points which are less distant from St. Louis than is Frederick, Okla., in Group 3, 11 which are less distant than Grandfield, Okla., and so on. Denison, Tex., just south of the Oklahoma-Texas boundary, is the same distance from St. Louis as is Ardmore. The rates from all of these Texas points are, as already stated, 2.5 cents higher than those from Group 3 points.

This showing has much merit and is entitled to weight in considering these complainants' proposals that northeastern Oklahoma and Kansas be grouped together, especially on traffic to St.
57 Louis and beyond; as are also many other circumstances and conditions affecting the interests of various parties. It is not necessarily controlling as to what the group areas shall be, for it would be difficult to suggest any group arrangement in this territory having a semblance of logic that would not contain some such situations. In fact, there are points in the complainants' proposed central Oklahoma group which are nearer to certain destinations than are some of the points in their proposed lower-rated northeastern Oklahoma group. For example, 65 points in the latter proposed group are farther distant from Omaha than is Enid, in the proposed central Oklahoma group. Nacogdoches, Tex., in their proposed North Texas group, is 100 miles farther from Omaha than is Breckenridge, Tex., in their proposed Ranger group. It appears similarly that when the Midcontinent case was decided there were instances in which distances from points in Group 3 as it then existed were less than those from points in Group 2. The number of such instances was of course less than the number which the complainants have here shown by comparing the original Group 3 area with the enlarged Group 2. However, it should be stated that, if these complainants' primary proposal that Oklahoma be regrouped upon the plan submitted by them be adopted, there would

be much merit in their claim that a parity of rates from their proposed northeastern Oklahoma group and from Group 2 to St. Louis should exist.

The complainants undertake to show that the proposals to group together Kansas and northeastern Oklahoma, on the one hand, and north Texas and southern Oklahoma, on the other hand, are supported by the general commodity-rate adjustment. Exhibited comparisons of southbound commodity rates on various commodities including canned goods, iron and steel articles, roofing material, paints and oil, and bags and bagging, from St. Louis, Chicago, and other points show that the rates on these commodities are in most instances lower to Group 2 points than to northeastern Oklahoma. Additional extensive comparisons are made of rates from points in western trunk-line territory and elsewhere to show that on traffic generally Ardmore and points in north Texas take the same rates, which are higher than those to Tulsa. For reasons previously given, evidence of this character is of little weight in this case in determining what the groups or differentials shall be. In addition, it appears that the rates last referred to from western trunk-line territory apply to the entire Texas common-point territory and are in many instances maintained at intermediate points in Oklahoma under the provisions of the fourth section. Furthermore, practically the whole class
58 and commodity adjustment in question is under attack as unlawful in the Consolidated Southwestern cases, Nos. 13535 and others.

The figures reproduced below, showing the percentages of refinery runs to capacities on May 1, 1924, were introduced by the complainants to indicate the alleged relative advantages or disadvantages under which the refiners in the several present or proposed groups shown operate: Kansas City, 66.66 per cent; Group 2, 51 per cent; Group 3, 31.19 per cent; proposed northeastern Oklahoma group, 39.86 per cent; proposed Enid-Oklahoma City group, 31.32 per cent; proposed Ardmore group, 24.02 per cent; and proposed north Texas group, 34.47 per cent. The percentages for Kansas, Oklahoma, and north-central Texas on August 1, 1924, were 53.26, 37.33, and 35.22, respectively, showing that the Kansas refiners had a more favorable ratio of output to capacity than did the Oklahoma or Texas refiners. In 1923, 52.98 per cent of the Kansas output of gasoline went to western trunk-line territory, as compared with 43.33 per cent from Oklahoma. The record indicates that of the movement from Kansas to this territory, relatively the larger share goes to points at which Kansas has differentials under Oklahoma. This probably is due to the fact that the Kansas refiners seek to market their products where the freight adjustment will yield them the greatest profits. On the other hand, the heavier movement from Oklahoma has been to points at which there are no differentials. The average refinery prices received for gasoline in Kansas, Oklahoma, and north Texas in 1923, were 10, 9.78, and 9.65 cents, re-

spectively, per gallon. The relationships between the average prices for kerosene and fuel oil were about the same. The differences in prices apparently reflect, in part at least, the differences in freight rates.

As heretofore explained, the complainants propose, in connection with their plan of group rearrangement, that north Texas shall continue on the present basis of 2.5 cents over Tulsa. They contend that this is practically necessary to the continued existence of the north Texas refining industry. Formerly these refiners were able to ship substantial quantities of their products to the West, the East, and the Southeast, but changes in the conditions allegedly have deprived them largely of these markets. The oil development in California now practically prevents their shipping westward to any extent, and in addition the movement of crude oil by water from California to eastern refineries has created a competitive situation in the latter territory which they are unable to meet. Also, because of the development of the oil and refining industries in Arkansas and Louisiana they now are unable to ship to those States, and can market
59 but little of their products in the Southeast. On export traffic they are at a disadvantage as compared with refineries located in Louisiana and at the Gulf ports. They thus claim that to every important marketing territory some other refiner has an advantage in rates, and that it is vital they be allowed to share in the business in western trunk-line territory. It appears that after the reduction in the north Texas rates to the present basis in December, 1922, there was an increase in the movement therefrom. One refinery shows that it shipped 9 cars in 1922, as compared with 720 cars in the summer of 1923, and 794 cars in the same months of 1924.

The Kansas refiners are able to and do obtain large quantities of high-grade crude oil through pipe lines from near-by northern Oklahoma pools, the distances in many cases being less than from the same pools to refineries in Oklahoma. It is stated in behalf of the Oklahoma complainants that during several years immediately preceding the hearing many of the refineries in that State have, on the basis of the year's average, sold their products at or below the cost of production, that the establishment of the differentials sought by the Kansas complainants would increase the movement of crude oil from Oklahoma into Kansas for refining and ultimate shipment therefrom by rail at the lower rates, and that this condition would mean a net reduction in railroad revenue by the loss of tonnage from Oklahoma, and would at the same time jeopardize the large investment in Oklahoma refineries to the advantage of the Kansas refiners. The refining capacity in Oklahoma is about two and one-half times that in Kansas. The crude-oil production in Oklahoma is about five and one-half times that in Kansas. Thus, the refining industry in Kansas is larger in relation to the crude-oil production than is that in Oklahoma, due in part at least to the better rate adjustment.

With respect to the present selling practice, which has already been described, it is asserted that, where Kansas has a differential under Oklahoma, the difference in rates represents a loss to the Oklahoma refiner and a disadvantage to that extent as against the Kansas refiner. The Kansas refiner quotes his delivered prices on the basis of the Group 3 price and freight rate and adds to his invoice the difference between the rate from Oklahoma and that from Kansas, where a difference exists. It is true that the Kansas refiner receives a greater price, measured by that difference, than does the Oklahoma refiner, but with the Group 3 price governing sales such difference does not appear to be strictly an absorption by the Group 3 refiner, as would be true if Group 2 fixed the price. There may be exceptions, where a Kansas refiner who has accumu-
60 lated excessive stocks in storage will cut the Group 3 price sufficiently to relieve that condition, but such instances are rare and the witness for the Oklahoma complainants testified that the practically universal sales custom is as previously described. It is possible, of course, that the differentials sought by the Kansas complainant might increase the volume of Kansas output with which the Oklahoma refiners would have to compete, but whether Kansas would ever become the price-fixing base is problematical.

It is unnecessary to set out in detail the rates proposed by these complainants based upon their proposed origin relationships as heretofore described. Below are shown representative comparisons of the present rates from Kansas, Oklahoma, and north Texas, those proposed by the Kansas complainants, and those proposed by the Oklahoma and Texas complainants from their proposed groups:

To—	From Kansas Group 2			From northeastern Oklahoma		From central Oklahoma		From Ardmore district		From north Texas	
	Present	Proposed [1]	Proposed [2]	Present	Proposed [2]	Present	Proposed [2]	Present	Proposed [2]	Present	Proposed [2]
	Cents	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*
St. Louis, Mo	29.5	27	29.5	29.5	29.5	29.5	30.5	29.5	32	32	32
Chicago, Ill	36	33	36	36	36	36	37	36	38.5	38.5	38.5
Milwaukee, Wis	39.5	36.5	39.5	39.5	39.5	39.5	40.5	39.5	42	42	42
St. Paul, Minn	43	39	43	43	43	43	44	43	45.5	45.5	45.5
Des Moines, Iowa	29.5	28	31	33	31	33	32	33	33.5	32.5	33.5
Omaha, Nebr	29.5	28.5	31	33.5	31	33.5	32	33.5	33.5	36	33.5
Sioux City, Iowa	36	34.5	38	39.5	38	39.5	39	39.5	40.5	42	40.5

[1] Proposed by Kansas complainants.
[2] Proposed by Oklahoma-Texas complainants.

The earnings under the rates proposed by these complainants would not differ widely from those under the present rates as previously shown in Appendix 4. The complainants contend that the rates should be measured by the average distances to the destination groups, instead of those to key points, and they have followed that theory in figuring distances and earnings. The table below shows, in illustrative instances, the average group-to-group distances in

comparison with those to the key points from the present Group 2 as representative:

	Short-line average distance to key point	Short-line average distance to group	Difference
	Miles	*Miles*	*Miles*
St. Louis, Mo.	407	329	78
Chicago, Ill.	634	538	96
Milwaukee, Wis.	700	665	35
Minneapolis, Minn.	664	592	72
Des Moines, Iowa	395	340	55
Omaha, Nebr.	329	295	34

61 The use of the average distances to the destination groups would, of course, show slightly greater earnings under the rates than would the use of the average distances to the key points. The present rates are in most instances the rates prescribed by us to the key points, subject to the general increases and reduction. Most of the groups were arbitrarily established by the carriers, as previously explained, and apparently do not represent groupings based upon commercial conditions. They are not necessarily proper groups when viewed from the standpoint of the consumers. In fact, intervening Iowa consumers object to certain relationships under present groupings, as will later be explained. In addition, the movements to the key points often exceed, sometimes greatly, the movement to any other points in the groups. For these and other reasons the record is not persuasive that the average distances to the groups should be used as the sole basis for fixing reasonable rates to the key points, but they should be given consideration.

An additional issue raised by these complainants concerns the rate generally from the territory of origin to destinations in northern Nebraska, South Dakota, North Dakota, and northern Minnesota, lying west of a line extending from Duluth, Minn., through Sioux Falls, which are alleged to be unreasonably high. The rates to these sections generally are relatively higher than those to the remainder of western trunk-line territory. Many of those to the Nebraska territory are on the basis of the full combinations over Omaha or Lincoln, Nebr., or but slightly lower. Rates to South Dakota and North Dakota are generally based on the commodity rates to Sioux Falls or other gateways, plus 75 per cent of the fifth-class rates beyond, which basis was prescribed in Codington County Oil Co. v. A., T. & S. F. Ry. Co., 53 I. C. C. 234, and Independent Home Oil Co. v. Director General, 59 I. C. C. 398. The North Dakota interveners, who support the complainants' contentions, view the method of constructing rates approved in those cases as wrong in principle, and contend that the rates to that State are contrary to our announcement in the Midcontinent case that the rates to particular points must not only be reasonable in themselves but must be properly related to the rates to other points. The rates to North

Dakota mount rapidly beyond the Minnesota line, with increasing ton-mile earnings. We are asked to prescribe rates which will grade up evenly from the present rates at the junctions and yield declining ton-mile earnings as the distances increase. North Dakota obtains about one-half of its gasoline from the Southwest, because the output of the nearer Montana refineries is not sufficient to supply the demand. The distributors sell at the prevailing
62 tank-wagon prices, and it is said that whenever the rate from Group 3 exceeds 75 cents, as they often do, gasoline from the Southwest can be handled only at a loss.

The rates to this western territory are for the most part individual rates; that is, the destinations are not grouped. These complainants have proposed certain groupings of the destinations and reduced rates thereto which they assert and endeavor to show would be reasonable. The groups appear to be more or less arbitrary. The fixing of groups necessarily requires that consideration be given to the locations of the points to be grouped, their transportation and commercial relationships, and the rail routes. The record does not deal with these subjects sufficiently to justify approval of the groups which have been proposed, nor does it establish the necessity for a general grouping of this territory. The traffic and other conditions therein have been recognized in the past as warranting a somewhat higher level of rates than obtains in other portions of western trunk-line territory, although the existing differences appear excessive. The rates to South Dakota destinations are under attack in No. 16309, South Dakota Independent Oil Jobbers' Asso. v. A., T. & S. F. Ry. Co., particularly in their relation to the rates to points in Iowa and southern Minnesota. Under the circumstances, it appears desirable to withhold specific findings in this report with respect to rates to this western territory, and accordingly these cases, in so far as they involve such rates, will be held open for further consideration in connection with No. 16309.

DEFENDANTS' PROPOSALS AND EVIDENCE

Although defendants take the position that none of the rates assailed is unreasonably high and that the mid-continent adjustment in general is too low, they have not undertaken to defend the adjustment in so far as the principal issue of alleged undue prejudice in the origin group relationships is concerned. They assert that the origin groups as they existed in 1915 have been extended beyond reasonable limits, due to the main factors of the locating of refineries beyond the original groups, carrier competition, and the demands of the producers for reduced rates to meet commercial competition; that the present rate adjustment accordingly is badly out of alignment and requires recasting; and that the controlling question here concerns the establishment of an adjustment which will give necessary recognition to the commercial conditions and fairly relate the

origin groups one to another, and at the same time conserve the carriers' revenues and require the petroleum traffic to bear its fair share of the transportation costs. They would give consideration, first, to the proper grouping of the origin points from the standpoint of their geographical location and the transportation service required, and then to the rates and group relationships. In fixing the rates they would consider the location of the groups, the distance of one group from another, the rates previously maintained, the rates or relationships, if any, prescribed by us, and the measure of the rates.

63

Proceeding upon these theories, defendants have submitted proposals for regrouping the origin territory into 14 groups and for revising the rate structure to conform thereto. The proposed groups, which resemble in some general respects the plan submitted by the Oklahoma and Texas complainants, are described in Appendix 1.

The principal proposed group changes, as will be observed, are in Kansas and Oklahoma. Two groups are proposed in Kansas and three in Oklahoma, instead of one group in each State as at present. It is proposed to restore Group 2 practically to its area in 1915 in the southeastern corner of Kansas, and to create a new group in the central-southern part of the State, designated Group 2½ in order that the base group in northern Oklahoma might continue to be known as Group 3, which would embrace all refining points which have been established in Kansas since the Midcontinent case was decided. Defendants state that the addition of these points to the original Group 2 has never been considered proper, and has not been satisfactory to the refiners in Group 3. They have taken the northern Oklahoma points in the original Group 3 area and grouped therewith the refining points afterwards established in the same general vicinity and formerly in the Enid group, to be known as Group 3. Defendants feel that Enid should be continued with the other northern Oklahoma points because it has become an important refining center and because the distance therefrom to St. Louis is only 545 miles as compared with 544 miles from Ponca City, Okla., which latter point was included in the original Group 3. The proposed Group 4 in central Oklahoma is the former Oklahoma City group, and the proposed Group 5 the former Ardmore group in southern Oklahoma, which prior to 1922 took arbitraries over Tulsa.

No important changes are proposed in the Burkburnett and Ranger groups in Texas, except that it is proposed to add to the Ranger group some outlying points on the west which now take higher rates. This would tend to slightly increase the average distances from that group. The proposed south Texas group takes in some additional scattering points situated toward the interior, including Waco, which is now on the Ranger basis. It is proposed to continue San Antonio and near-by points in a separate group; to place Little Rock and

Pine Bluff, Ark., in a group separate from the Shreveport-El Dorado district, with which they are now grouped; and to place
64 Alexandria on the Shreveport-El Dorado basis to St. Louis and beyond, with slightly higher bases at other points. Little Rock, Pine Bluff, and Alexandria are not important refining centers, and their inclusion in the present Shreveport-El Dorado or New Orleans groups tends to hold down the average distances from those groups.

Defendants do not propose any changes in the rates from Kansas City, or Group 1. They undertake to prove that the rates assailed from that group are not unreasonable, and that the rates which they propose from the remainder of the territory would be reasonable and would result in just relationships between the proposed groups and between such groups and Kansas City.

Because northern Oklahoma—or Tulsa, to be exact—is the price-fixing base, as heretofore explained, defendants have used their proposed Group 3 as the base group in preparing their proposed rate adjustment. They state that their proposed adjustment was arrived at by first determining upon proper base rates from Group 3 to the natural gateways, Kansas City and St. Louis, and then adjusting the rates from the other proposed origin groups, and to other destinations, in just relation thereto.

Defendants have exhibited the rates proposed by them to 26 key points representative of the major portion of the destination territory. These do not include points in western Nebraska or the Dakotas but the rates are shown to basing points used in constructing rates to those States. As the proposed rates to points beyond Kansas City and St. Louis generally bear about the same relationships to the proposed rates to those points as now exist, it will be sufficient here to refer only to the rates to the latter points. The table below shows, from the proposed groups to these gateways, the average distance as figured by defendants, the present and proposed rates, and the ton-mile earnings.

Proposed groups	Group number	To Kansas City, Mo.				To St. Louis, Mo.			
		Average distance	Present rate	Proposed rate	Ton-mile earnings	Average distance	Present rate	Proposed rate	Ton-mile earnings
		Miles	*Cents*	*Cents*	*Mills*	*Miles*	*Cents*	*Cents*	*Mills*
Kansas City	1					277	26	26	18.8
Southeastern Kansas	2	149	17.5	17.5	23.5	385	29.5	29.5	15.3
Central Kansas	2½	205	17.5	19	18.5	478	29.5	31	12.9
Northern Oklahoma	3	280	24	24	17.1	488	29.5	31	12.7
Central Oklahoma	4	355	24	28.5	16	535	29.5	32.5	12.2
Southern Oklahoma	5	455	24	33.5	14.7	647	29.5	35	10.8
Burkburnett	6	532	29.5	35	13.3	727	32	37.5	10.3
Ranger	7	627	29.5	37.5	12	838	32	40	9.6
South Texas	8	737	32	37.5	10.2	776	32	37.5	9.7
San Antonio	9	788	34.5	40	10.2	936	34.5	40	8.6
Fort Smith	10	328	24	28.5	17.4	416	31	31	14.9
Little Rock-Pine Bluff	11	493	29.5	35	14.2	367	29.5	31	16.9
Shreveport-El Dorado	12	580	29.5	35	12.1	517	29.5	35	13.5
New Orleans-Baton Rouge	13	878	48	42.5	9.7	707	29.5	36	10.2
Alexandria	14	683	29.5	37.5	10.8	599	29.5	35	11.7

65 The distance relationships of the origin groups in some instances differ substantially at Kansas City as compared with St. Louis, or vice versa, and therefore the rate relationships likewise differ. This fact may be observed as to the proposed rates from the following table, which is based on that next preceding and which shows the differences between the average distances and the proposed rates from the proposed Group 3 on the one hand and the other proposed groups on the other hand:

From—	Relation	To Kansas City, Mo.		To St. Louis, Mo.	
		Distance	Rate	Distance	Rate
		Miles	*Cents*	*Miles*	*Cents*
Group 3	Distance and rate	280	24	488	31
Group 1	Under Group 3			211	5
Group 2	do	131	6.5	103	1.5
Group 2½	do	75	5	10	0
Group 4	Over Group 3	75	4.5	47	1.5
Group 5	do	175	9.5	159	4
Group 6	do	252	11	239	6.5
Group 7	do	347	13.5	350	9
Group 8	do	457	13.5	288	6.5
Group 9	do	508	16	448	9
Group 10	do	48	4	[1] 72	0
Group 11	do	213	11	[1] 121	0
Group 12	do	300	11	29	4
Group 13	do	598	18.5	219	5
Group 14	do	403	13.5	111	4

[1] Under the group mileage.

All of the origin groups are, to a greater or less extent, competitive one with another on traffic to the destination territory involved. The table below, which is constructed along the lines of the preceding one, shows the distance and the proposed rate relationships from the proposed groups in the successions indicated above:

From—	Relation	To Kansas City, Mo.		To St. Louis, Mo.	
		Distance	Rate	Distance	Rate
		Miles	*Cents*	*Miles*	*Cents*
Group 1	Distance and rate			277	26
Group 2	do	149	17.5	385	29.5
Do	Over Group 1			108	3.5
Group 2½	Over Group 2	56	1.5	93	1.5
Group 3	Over Group 2½	75	5	10	0
Group 4	Over Group 3	75	4.5	47	1.5
Group 5	Over Group 4	100	5	112	2.5
Group 6	Over Group 5	77	1.5	80	2.5
Group 7	Over Group 6	95	2.5	111	2.5
Group 10	Over Group 3	48	4.5	[1] 72	0
Group 11	Over Group 10	165	6.5	[1] 49	0
Group 12	Over Group 11	87	0	150	4
Group 14	Over Group 12	103	2.5	82	0
Group 13	Over Group 14	195	5	108	1
Group 8	Over Group 12	157	2.5	259	2.5
Group 9	Over Group 8	51	2.5	160	2.5

[1] Under the group mileage.

66 It will be noted that the proposed group-rate differences are as a rule narrower to St. Louis than to Kansas City, where lesser distances generally are involved; also that the rate differences vary noticeably in some instances, the reasons for which will appear from the defendants' explanations of the proposed adjustment as outlined below.

No change is proposed in the rate of 17.5 cents from the proposed Group 2 to Kansas City, for the reason that the distance is approximately the same as that from the original Group 2 in 1915. The rate of 19 cents proposed from Group 2½ is 1.5 cents higher than that proposed from Group 2, the distance being 56 miles greater. Defendants claim that this is reasonable as compared with the difference of 5 cents from the original Group 2 under Group 3, for a difference in distance of 101 miles, which was approved by us in the Midcontinent case. They suggest that there might have been a more equal division of the difference of 6.5 cents between Groups 2 and 3 in fixing the rate from Group 2½, but for the fact that the short-line distances from some of the points in Group 2½ compare favorably with the distances from some of those in Group 2. The rate differences as between proposed Groups 3, 4, 5, 6, and 7 are based on the differences in distances between those groups and as compared with Group 3.

The rate proposed from Fort Smith, Ark., or Group 10, to Kansas City is the same as that from Group 4 in central Oklahoma, the distance from the latter being but 27 miles greater. Equal rates are proposed from Little Rock-Pine Bluff Group 11 and Burkburnett Group 6, the difference in distance being 39 miles. The same rate is proposed from Shreveport-El Dorado Group 12 as from Group 11, the difference in distance being 87 miles. The latter was for the purpose of equalizing Group 12 and Group 6 and at the same time bringing about the other rate equalities mentioned.

The proposed rate from south Texas or Group 8 to Kansas City is based 2.5 cents over the Shreveport-El Dorado group, the relationship which exists at present; the difference in distance being 157 miles. Defendants concede that, from a transportation standpoint, the rate from the south Texas group might be higher than that proposed, but state that the lines serving that group are unwilling to carry rates higher than 2.5 cents over Shreveport. The proposed rate from the San Antonio Group 9 is based 2.5 cents over south Texas, as at present. The proposed rate from New Orleans, Group 13, is based 7.5 cents over Shreveport and 5 cents over south Texas, as being justified by the differences in distances.

67 No change in rates is proposed from the proposed Group 2 to St. Louis. When a parity of rates was prescribed by us in the Midcontinent case from Groups 2 and 3 the difference in distance was 54 miles. The difference between the proposed Groups 2 and 3 is 103 miles. This increase is said to be due to the changes in the locations of refineries in the areas embraced in the two proposed groups since the Midcontinent case and to the slightly enlarged area

of the proposed Group 3 over the original group. For this increased difference in distance defendants propose a differential of 1.5 cents over proposed Group 2. The same rate and differential are proposed from Group 2½ because the distance therefrom is about the same as that from Group 3.

Proposed Groups 10 and 11 in Arkansas are given the Group 3 basis to St. Louis, although the distances are somewhat less than those from the latter group. Defendants' witness agreed that the rate from Group 11 might properly be lower than that from Group 3, but stated that the initial lines serving Group 11 insist that the two groups be on the same basis. The rate proposed from Shreveport-Eldorado Group 12 is the same as that proposed to Kansas City, for the reason that we prescribed a parity of rates to Kansas City and St. Louis in Western Petroleum Refiners' Asso. v. Director General, supra, on account of the nearly equal distances. The proposed rates from the proposed south Texas and San Antonio groups are made on the same bases as are the proposed rates to Kansas City, described above. The proposed rate from New Orleans is based 1 cent over Shreveport-El Dorado. This rate might have been higher, according to defendants, but for the unwillingness of the Illinois Central to carry a higher rate to St. Louis than to Louisville, Ky. The Shreveport-El Dorado basis is proposed from Alexandria, for the reason that Alexandria is intermediate via some of the lines serving the Shreveport-El Dorado district.

Although the proportional rates applicable to traffic to territories east of the Mississippi River are not within the issues, defendants assert that consideration should be given to the effect which any revision of the rates in issue wuold have upon the rates applicable to such traffic. The proportional rates to St. Louis are now 2 cents less than the locals. In connection with their proposed adjustment to western trunk-line territory, including the upper gateways for traffic to the East, defendants have submitted an outline of a readjustment of the proportional rates to such gateways, and of the local and proportional rates to the lower Mississippi River crossings of
68 Memphis, Tenn., Vicksburg, Miss., and New Orleans, which it would be their purpose to establish in the event of approval of their proposed western trunk-line adjustment.

The contemplated increases to St. Louis correspond to those proposed in the local rates. Rates from Texas, for example, to eastern destinations make through Vicksburg, and are lower than the rates from Oklahoma made through St. Louis. The tariffs permit unrestricted routing and provide that the lowest combination shall apply over any route. This makes the Vicksburg combinations applicable from Texas through St. Louis. These departures from the provisions of the fourth section are protected by appropriate application, but increases in the proportional rates from Oklahoma to St. Louis without corresponding increases from Texas to Vicksburg would bring about increased and unprotected departures. A similar situation exists and would exist as to traffic from Louisiana, the rates

from which also make through Vicksburg or New Orleans. Defendants say that for these reasons it would be impossible to increase the proportionals from Oklahoma to St. Louis, without at the same time increasing the rates from Louisiana and Texas to the lower crossings. They would accordingly revise the local and proportional rates to these crossings to properly harmonize them with the proposed adjustment from Oklahoma to the upper gateways and otherwise to bring about what they consider would be a proper adjustment. The plan includes some changes in the relationships of the origin points and groups on traffic through these gateways.

Since the proportional rates are not here in issue, no findings or expression will be made concerning any changes therein which defendants may consider expedient or necessary as a consequence of the disposition made of these proceedings.

Defendants have presented a vast amount of comparative rate and statistical data intended to show that the present rates assailed are not unreasonably high, and in support of the rates and relationships of rates which they have proposed and of their claim that the present rates in general are subnormal and do not place upon petroleum products the proper proportion of the transportation costs. There data consist, among other things, of comparisons of the present and proposed rates with rates on the same commodities practically throughout the territory from the Missouri and Mississippi Rivers to the eastern seaboard, on the basis of the actual levels and of the percentages which the commodity rates are of the class rates, and with rates on various other commodities on the same bases, comparisons of the average origin group-rate differences on various commodities with those, present and proposed, on refined oil,
69 which need not be discussed for reasons previously given, and statistics dealing with average loadings, hauls, and revenues on petroleum products as compared with other commodities, traffic densities, and railway operations and revenues in the territories concerned. Perhaps the greater portion of defendants' comparative rate evidence is directed to the rates from Kansas City, apparently on the theory that if the reasonableness of these rates be established that fact would go far toward upholding their contentions that the present relatively lower rates from the farther distant groups are subnormal and should be increased.

Prior to February 28, 1916, according to defendants, fifth-class rates applied from Kansas City to western trunk-line points, except St. Louis, Peoria, Ill., Chicago, and points ordinarily grouped therewith, to which latter points commodity rates 5 cents under the class rates had been established to enable the Kansas City refineries to compete with refineries in Illinois. On that date commodity rates were established generally from Kansas City in connection with the adjustment prescribed in the Midcontinent case, in order to preserve the then existing relationships between Kansas City and the mid-continent groups. It is said that, with the exception of these commodity rates from Kansas City, and commodity rates from

Chicago to the Missouri River cities, which were 90 per cent of the class rates, fifth-class rates applied generally on petroleum and its products within western trunk-line territory prior to Federal control, that the establishment of commodity rates generally was due to the application of the increase of 4.5 cents on this traffic in lieu of the 25 per cent increase made effective on traffic generally in 1918, and that the present rates within this territory reflect the former fifth-class basis.

The rates on traffic generally between the Missouri and Mississippi Rivers, and between Chicago, on the one hand, and the Twin Cities and the river points, on the other hand, are said by defendants to be among the lowest in the country, distances considered, due primarily to the intense carrier competition. The adjustment between the rivers appears to have been based to a large extent upon the short-line distance of 200 miles between Kansas City and Hannibal, Mo.; but the rates are the same between all Missouri River cities, Kansas City to Omaha, on the one hand, and the upper Mississippi River points, as well as St. Louis, on the other hand. The average distance over the various routes between the several river points is in excess of 300 miles.

Defendants undertake to show that the fifth-class rates from Kansas City are low by comparison with individual or scale
70 rates maintained elsewhere, and in turn that the refined-oil rates from that point are low in relation to the fifth-class rates as compared with other commodity rates maintained in the same territory and east of the Mississippi River. The class rates from Kansas City are compared with class rates, among others, therefrom for similar distances to Kansas, Oklahoma, and Texas points, from Chicago to central territory and to the Southeast, from Omaha to western Nebraska points, from Minneapolis, Minn., to South Dakota and Wyoming points, from St. Louis to the Southeast, and with various scale rates. With the exception of the central territory and New England scales, the Kansas City rates are lower, in some instances materially, than are the rates with which they are compared.

Assuming that the class rates reflect substantially the relative transportation conditions, the record shows that the oil rates from Kansas City are lower percentages of the fifth-class rates than are many commodity rates from other refining points in western trunk-line and other territories. In this connection defendants compare the rates from Kansas City to 19 representative destinations here concerned with rates for equal distances from Chicago and St. Louis to points in western trunk-line and central territories and with the central-territory scale rates. The rates from Kansas City are generally the same as, or lower than, those exhibited from Chicago to western trunk-line points. For example, the rate from Kansas City to Milwaukee is 36 cents as compared with the rate of 38.5 cents from Chicago to Sioux City for practically the same distance. The rates from Chicago and East St. Louis to central terri-

tory are lower than the rates here assailed from Kansas City, as is proper in view of the differences in the conditions.

The Kansas City rates are, with the exception of those to Wisconsin and Minnesota destinations and several other scattering points, lower percentages of the fifth-class rates than are the rates with which they are compared. As an illustration, the commodity rate from Kansas City to Clinton, Iowa, is 83.5 per cent of fifth class, while the rate from Chicago to Mason City, Iowa, is 96.7 per cent and the central-territory rate for the same distance is 88.5 per cent of the corresponding class rates. The rates from Chicago in a number of instances are on the full-class basis. The central-territory commodity rates for distances up to 800 miles average 86.87 per cent of the fifth-class scale. The average for the full scale is 84.6 per cent. The average of the oil rates from Kansas City to 36 destinations used by complainants is, as has previously been shown, 82.6 per cent of the average fifth-class rates.

Rates from the mid-continent field constructed on the basis of the average percentage which the central-territory oil rates are
71 of the fifth-class scale in that territory, namely, 84.6 per cent, would be higher than either the present rates or those proposed by defendants. Defendants suggest that a more appropriate comparison might be with reference to the first-class rates in comparing the level of the proposed rates with rates in central territory, for the asserted reason that the first-class rates more accurately indicate the levels of the rates in two territories than do the fifth-class rates. The relationship of the lower classes to first class varies in the two territories and in addition there are a larger number of classes in western than in official territory. They have accordingly compared on this basis the proposed adjustment from representative points in different proposed origin groups to the gateways of Kansas City and St. Louis with central territory rates. The comparisons need not be extensively reproduced. The proposed rates are materially lower in relation to the first-class rates between the same points than are the commodity rates in central territory for the same distances. As typical, the proposed rate from Tulsa to Kansas City is 18.5 per cent and to St. Louis 17.7 per cent of the first-class rates between the same points. The refinedoil rates in central territory for the same distances are, respectively, 31.8 per cent and 31.2 per cent of the first-class rates. The rate from Kansas City to St. Louis is relatively the highest in the adjustment, on this basis of comparison. It is 28.4 per cent of the first-class rate, while the rate in central territory for the same distance is 31.6 per cent of the first-class rate.

Additional comparisons are made of the rates from Kansas City with commodity rates from various refining points in central and southern territories to destinations in those territories. The results vary. The comparative rates in some instances are higher and in others lower than those from Kansas City, although there are but few wide differences. Where percentages of the fifth-class rates are

shown those from Kansas City are generally lower. The level of the rates generally in the East is lower than in western trunk-line territory, due to the more favorable traffic conditions. The rates within the Southeast are materially higher than those from the Southwest to western trunk-line territory and within the latter territory. They are high in comparison with rates generally in other sections, and are not considered as of material value for comparative purposes in this proceeding. Other exhibited comparisons include rates on canned goods, wheat, iron and steel articles, agricultural implements, syrup, and sugar between points in western trunk-line and central territories and from the former to the latter territory. Generally speaking, rates on these commodities yield higher earnings than do the assailed rates on refined oil.

72 In some instances the comparative earnings shown by defendants are based on the total loaded and empty movement. Although the rates on some of the comparative commodities are lower than the oil rates, the gross-ton-mile earnings thereunder are higher, due to the greater empty movement of tank cars than of box cars. As previously stated, there is a 100 per cent empty movement of equipment used in oil traffic. The average empty haul of box cars on the North Western for 1923 was 20.27 per cent of the loaded movement. The average empty haul of this equipment on eight southwestern and western trunk-line roads for the month of October, 1923, was 24.73 per cent.

Defendants have made comparisons similar to those hereinabove discussed with the rates proposed from Kansas, Oklahoma, and other origin States. The rates, present and proposed, from those States generally are relatively lower than the rates from Kansas City and the comparisons are equally as favorable to defendants' contentions as are the comparisons dealing with the rates from the latter point. The proposed rates are, as a rule, lower for comparable distances than the rates on the same commodity from Kansas City and from St. Louis and Chicago to western trunk-line and central territories. The present rates from Groups 2 and 3 to Kansas City are lower than in central territory for the same distances.

Prior to July 1, 1923, the rates from the Southwest to interior Nebraska points west of Lincoln differential territory, of which Hastings and Grand Island are representative, were only slightly lower than the combinations on Lincoln or other basing points. On that date substantial reductions were made to this territory, those from Groups 2 and 3 to Grand Island, for example, being 13.5 and 13 cents, respectively. The present rates from Group 2 to 21 representative destinations average 79.5 per cent of the fifth-class rates under the Missouri River-Nebraska scale.

The substitution of the 4.5-cent increase on petroleum and its products in 1918, in lieu of the 25 per cent increase generally applied to other traffic, has resulted in rates to-day which generally are lower than they would have been under the 25 per cent increase. It

amounted to increases less than 25 per cent in rates of 18 cents or more, and in excess of 25 per cent in rates under 18 cents. Most of the rates from the origin territory here considered exceed 18 cents. From Tulsa and other points in the original Group 3 to representative destinations the present rates are from 1 to 4.5 cents less than they would have been had the 25 per cent increase remained in force.

73 From the rest of Oklahoma and from other groups beyond the situation is different because the bases of the rates therefrom have been materially reduced since 1918.

Petroleum products form an important part of the tonnage of defendants, especially the southwestern lines. For example, they amounted to an average of 11.3 per cent of all carload freight on 19 southwestern roads in 1923. The movement on several of these lines was particularly heavy, the percentages being: Santa Fe 14.2, Missouri-Kansas-Texas system 22.6, Kansas City, Mexico & Orient 22.9, Midland Valley 38.3, and the St. Louis-San Francisco 10.6. For the first nine months of 1924 the petroleum-products traffic on the Missouri-Kansas-Texas system was the following percentages of all carload freight: Average haul 137 per cent, average revenue 111 per cent, and average weight 108 per cent. The Kansas City Southern shows that in 1923 its average haul on all carload traffic was 240 miles and on petroleum products 202.9 miles. The average revenues per ton were $2.43 and $2.12, respectively, indicating that, distances considered, petroleum products paid about the same as all carload freight. For the four years ended with 1923, petroleum products constituted an average of 13.87 per cent of the Kansas City Southern total carload tonnage and yielded an average of 11.58 per cent of its carload revenue. For the same period the average hauls of petroleum products on the Missouri Pacific were somewhat greater than, and the ton-mile earnings about the same as, those on all carload freight.

The North Western, a destination line, shows that its average earning for 1923 on refined petroleum was 3.85 mills per gross-ton-mile as compared with 4.58 mills on all carload freight, and 4.92 mills on all carload freight except petroleum. Based on the gross-ton-miles, its petroleum traffic amounted to 11.28 per cent of all carload traffic and yielded 9.56 per cent of all carload revenue, a ratio of 84.7 per cent. When compared with all carload traffic except petroleum products, the percentages and ratios are 14.18, 10.58, and78.86, respectively. In the same year 76.16 per cent of the North Western's petroleum traffic was interline as compared with 50.18 for all carload traffic and 49.17 per cent for all such traffic except petroleum.

Statistics for 10 important southwestern and western trunk-line defendants show that for the year 1923 the average revenue on petroleum products was 3.623 mills per gross-ton-mile as compared with 4.58 mills on all other carload traffic, 7.643 mills on all less-than-carload traffic, and 4.709 mills on all freight traffic. The ratio of

the earnings on al carload freight to those on petroleum products was 126.99.

74 Defendants have compared the revenue tons 1 mile per mile the line and the gross revenue per mile of line in the several districts and regions as indicating the comparative traffic densities. The western district and the constituent regions show the lowest results per mile of line, in the country, as may be seen from the following table for the first seven months of 1924:

	Tons 1 mile	Freight revenue
New England region	692,332	$12,364
Great Lakes region	1,617,233	18,076
Central eastern region	1,933,061	20,769
Pocahontas region	2,908,192	20,068
Total eastern district	1,737,899	18,623
Southern district	784,934	8,711
Northwestern region	498,113	5,756
Central western region	601,387	7,389
Southwestern region	507,848	6,426
Total western district	540,670	6,556
United States	910,213	10,221

Using 1915 as the base, or 100, the average earnings per ton-mile for the western district in 1923 were 139.86, as compared with 179.9 for the eastern district, 149.45 for the southern district, and 154.37 for the United States.

Numerous other rate comparisons were submitted by defendants, all of which have been considered in reaching the conclusions herein announced but which for lack of space will not be reproduced.

IOWA, ST. JOSEPH, AND ST. LOUIS INTERVENERS

Much of the evidence of the interveners located in the State of Iowa and at St. Joseph and St. Louis relates especially to the rates on fuel oil which will be considered in a separate part of this report. They are, however, interested in the gasoline rates in themselves and also as the base rates to which the fuel-oil rates are related.

Of the several destination States, Iowa is, with the exception of Illinois, the largest consumer of petroleum products. The primary purpose of the Iowa interveners is to preserve the present rates from Group 3 against any increases. They contend that the present rates generally are sufficiently high, and that those to certain portions of the State are in fact relatively too high. The latter reference is more particularly to rates to points in the north-central part of the State, such as Mason City and Fort Dodge.

Iowa is divided into a number of elongated rate groups which, generally speaking, extend in an east-and-west direction across
75 the State. These groups for the most part follow the rail lines which run in the same direction, and result from the application of the Illinois or Mississippi River rates at intermediate points. For example, a rate of 33 cents applies from Group 3 to Pe-

oria and other western Illinois points and also to all points in a group in southern Iowa embracing nearly one-third of the area of the State and including Des Moines. The group immediately to the north thereof takes a rate of 34 cents, which is the Dubuque, Iowa, rate extended back in the same manner. Going north, the rates thus grade upward and into the Minnesota and Wisconsin adjustments. The most northerly group takes a rate of 42 cents, which also applies to contiguous territory in Minnesota and Wisconsin.

Dealing with the situation generally, the Iowa interests point out that the class rates from Kansas City and from Kansas and Oklahoma are on the St. Louis basis to, roughly, the southern two-thirds of the State and on the Peoria basis to the remaining third, as maxima. Fort Dodge takes the Peoria basis on oil from Kansas City, but the rate from Group 3 is 5.5 cents higher than that to Peoria. The Fort Dodge interests show that on class and commodity traffic generally Fort Dodge is grouped with Des Moines and St. Louis and at rates lower than those to Peoria. The table below shows the rate on oil and the distances from Group 3 to Fort Dodge and Mason City in comparison with those to other points:

From Group 3 to—	Distance	Rate
	Miles	*Cents*
Fort Dodge, Iowa	624	38
Mason City, Iowa	683	4[illegible]
Des Moines, Iowa	438	[illegible]
Peoria, Ill	657	33
Dubuque, Iowa	735	34
Sioux City, Iowa	610	39.5
St. Paul, Minn	822	43

In the Midcontinent case the defendants proposed the same rate from Group 3 to all points in a blanket embracing the southern two-thirds of Iowa, in which Des Moines and Fort Dodge are situated, northern Missouri, and river points north of St. Louis, and a rate 2.5 cents higher, or the same as that to Peoria, to northern Iowa, including Mason City. We did not adopt the blankets or the precise rates proposed by the defendants, but prescribed reasonable rates to certain key points, as for example, Des Moines. The rate prescribed from Group 3 to Des Moines was the same as that prescribed to river points north of Keokuk, Iowa, including Galesburg, Ill. The Fort Dodge and Mason City interests ask that they be placed on the Des Moines-Peoria basis, claiming that they
76 were entitled thereto under our decision in the Midcontinent case. The rates prescribed in that case to key points were in the nature of a nucleus around which the carriers were expected to build a complete adjustment, and we did not require the observance or establishment of the destination groups which they had proposed.

The Mason City interests contend that we should prescribe in these proceedings a just and reasonable basis of rates to all of Iowa which will effect proper relationships between the competitive dis-

tributing points, that the rates to Mason City are relatively too high and should be more in line with the general level in this territory, and that there should be an equality of rates, distance considered, throughout the territories here dealt with. In explanation and support of the latter contention and also in support of the contention that Mason City is entitled to the Peoria basis of rates, they have presented a mathematical computation based upon 369 separate rates representative of the entire present adjustment, which effects an equalization of all such rates. The formula is complicated and need not be here explained, but it coordinates the rate and distance factors in a manner to observe the principle that ton-mile earnings shall decrease as distance increases and makes all rates the same for the same distance. This formula appears to reflect only the element of distance. It would give Mason City approximately the same rate as Peoria.

The rate of 34 cents from Groups 2 and 3 to Dubuque is 1 cent higher than that to other river points north of Keokuk, and consumers at Dubuque ask to be placed upon a parity with such other points, in conformity with our decision in the Midcontinent case. This departure from the basis prescribed in that case was authorized by us. Burlington, Keokuk, Fort Madison, and Davenport, Iowa, interests are opposed to any increases in the rates to those points, pending the disposition of their complaint in No. 16504, now pending, in which they assail the level of such rates in comparison with those to St. Louis.

Kansas City, Atchison, Leavenworth, and St. Joseph comprise the so-called lower Missouri River group, or Group 1. They take the same rates on petroleum products both inbound and outbound, with the exception that the rate from Group 2 to Kansas City is 2.5 cents less than that to St. Joseph. The principal interest of the St. Joseph interveners is to secure the same rate as Kansas City from this group. Defendants propose to continue the present rate of 20 cents from their proposed Kansas Groups 2 and 2½ to St. Joseph; also to continue the present rate of 17. 5 cents from proposed Group 2, and to establish a rate of 19 cents from proposed Group 2½, to Kansas City.

77 The table below shows the short-line average distances as figured by these interveners from the present and proposed Kansas groups to Kansas City and St. Joseph, and the averages to the group.

From—	To Kansas City, Mo.	To St. Joseph, Mo.	To Kansas City-St. Joseph group
	Miles	*Miles*	*Miles*
Present Group 2	173	205	187
Proposed Group 2	148	185	200
Proposed Group 2½	203	212	204

It will be noted that the distance from defendants' proposed Group 2 to St. Joseph is less than that from their proposed Group 2½ to Kansas City; yet they propose higher rates in the former than in the latter instance. A refinery at St. Joseph has closed its plant, alleging as a reason the freight difference on inbound crude oil in favor of Kansas City. The rates on crude oil are not in issue, but they are the same as the fuel-oil rates and differentially related to those on refined oil. The rates on class and commodity traffic generally from points in Group 2 are the same to Kansas City and St. Joseph. Defendants explain that the rates on oil from that group to Kansas City are depressed by the allegedly low Kansas intrastate basis, which does not affect those to St. Joseph. Evidence offered by the intervener dealing with the measure of the present rate of 20 cents to St. Joseph has been considered.

Intervening consumers in the St. Louis-East St. Louis districts are opposed to any increases in their rates, particularly from Group 3 or that part thereof which fixes the prices. They object to the increased distances from the present enlarged group being used as a basis for increases in the rates from the area of the original group. They contend, like other parties, that consumers should not be required to pay increased rates because the carriers were influenced by competitive conditions to extend this group. For these reasons they favor restoration of the original group, although they are opposed to the defendants' plan for grouping Oklahoma and their proposed increases in the rates from parts thereof. A specific suggestion is that, if Group 3 is considered too large from which to apply the present rates, a consistent revision would be to apply the present rate from central Oklahoma, with a differential thereunder from the combined Kansas-northern Oklahoma territory. These interveners although principally interested in the rates from the base group, are opposed also to Group 2 being accorded differentials under that group, for the alleged reason that the Kansas refiners are not injured by a parity of rates and would pocket any difference as increased profits.

78 In support of the alleged adequacy of the present rates in general, these consumers stress the fact, as do other parties, that the volume of production, consumption, and movement, as well as the average loading per car, of petroleum products have materially increased since the decision in the Midcontinent case. They are mainly interested in the rates on fuel and gas oils, and oppose increases in the rates on gasoline partly because of the possible effect such increases would have on the rates on the low-grade products. Evidence introduced and contentions advanced by them concerning the rates on those products will later be considered.

THE PROPOSED GROUP CHANGES

Each of the plans for reconstruction of the origin groups and the rates therefrom is strongly contested by opposing complainants or interveners. Shipping interests in every group are parties hereto

by intervention and practically every proposed change allegedly would disadvantageously affect some party and is opposed. The opposing parties have introduced a large amount of evidence, much of which is in support of the retention of the present groups, and all of which has been carefully considered.

As has been seen, the territories of origin and destination here dealt with are, respectively, important refining and consuming areas. Western trunk-line territory is to a large extent dependent upon oil produced in the Southwest, and in turn the refineries in the latter territory are in keen competition for this business. The interests of all concerned require that rates be so adjusted that the producing interests throughout this origin territory may within reasonable limits have access to this outlet. The business is highly competitive and the comparatively narrow margin of profit limits the amount of rate disadvantage which may be absorbed and still permit distribution at a profit. There are features of the competitive situation, both from the commercial and the transportation standpoints, which are peculiar to the petroleum traffic. All parties to these proceedings recognize that reasonable groupings of the origin territory are proper if indeed not necessary. There are refineries scattered practically throughout the mid-continent field. Scarcely an important group change could be made without harmful effects upon some shipping point. With a few exceptions, the present groupings have been in effect for some time and an important commerce has been built up thereunder. While changes in the groupings might result in some technical improvement in the rate adjustment there are many factors pointing to the desirability of leaving
79 the present groupings unchanged. For example, according to computations made by interveners based on the distances to 24 important destinations, principally on and west of the Mississippi River, the average distances from all Oklahoma points grouped together exceed those from the Oklahoma complainants' proposed northeastern Oklahoma group by only 14 to 33 miles. Furthermore, the average distances from Group 3 appearing of record in all probability are slightly greater than would be represented by a weighted average although there are no specific figures of record upon which an extract weighted average may be computed. It is, however, clear that, speaking generally, the larger and more important refineries in Oklahoma are those in the northern and northeastern portion of the State. There are many groups on traffic generally or on other particular commodities which are equal to or larger than the present Group 3.

It is obvious, therefore, that no important group changes should be made unless supported by the strongest reasons requiring the removal of unlawful situations. It is unnecessary to cite cases in which we have upheld this principle. The group rearrangement proposed by the Oklahoma and Texas complainants appears to be designed basically to serve the interests of those complainants. Consideration must be given, however, to the interests of all of those who

would be affected. It is apparent that this proposal would not serve the best interests of the midcontinent refineries as a whole. The defendants' proposal is subject to somewhat the same comment. Their effort has been to regroup and realign the rates in a manner which would reflect the transportation element to a somewhat greater extent than at present. While, as noted below, we think that some realignment of the relationships between the origin groups together with certain changes in the rates to various destinations should be made, and while we recognize the constructive character of the defendants' proposals in many respects, we are not prepared to accept their proposed changes in groupings. We are of the opinion and find that the present groupings have not been shown to be unlawful and should not be changed in this proceeding.

THE RATES AND ORIGIN RELATIONSHIPS OF RATES

The enlargement of Group 3 has, as has been seen, substantially increased the average distances therefrom. The bases of rates prescribed in the Midcontinent case are therefore lower in their relation to the distances than they were at that time. Group 2 also has been enlarged, but not to the same extent as has Group 3, and
80 the differences in distances in favor of that group are now greater than they formerly were. The interests of all concerned require that the rates from other groups shall continue to be closely related to those from Group 3. The rates from the latter group and from groups beyond are lower as a rule to St. Louis and points beyond than to points beyond Kansas City, as Appendix 2 will show. The increased average distances from Group 3 and the lower level of the rates and earnings on petroleum products than on various other commodities warrant some increases in the rates from Group 3, particularly to St. Louis and the territory beyond and to Kansas City, while on the other hand, in the interest of a better related destination adjustment, in some instances the rates from Group 3 to territory north of Kansas City should be slightly reduced. Furthermore, the origin group relationships are in many instances the result of arbitrary action of various carriers and do not represent a fair relative adjustment. In the Midcontinent case, we fixed no differences in the rates from the Groups 2 and 3 to St. Louis and Chicago, for example although the differences in distances from Group 2 under Group 3 at that time were 54 miles and 98 miles, respectively. The present differences are 132 miles and 171 miles, respectively. In view of these increased differences, and consistently with other group differential bases now in force, or herein prescribed, it is proper that the rates from Group 2 should be realigned as compared with Group 3 to bring about differences where none now exist and otherwise to effect a better adjustment than now exists. Under all of the circumstances and conditions, it would appear that Group 2 is entitled to a minimum differential under Group 3 of 2 cents, with slightly higher differentials in destination territory reached directly through the Kansas City gateway.

As will be seen from Appendix 3, the present differences in rates of Group 1 under Group 3 are noticeably lacking in uniformity and reflect but little regard for differences in distances or the level of the rates to particular destinations. A more even gradation of the rate differences, and increases in such differences in some instances, are proper. The minimum differential should be 7 cents.

Intervening interests in the Ranger group take the position that that group, or a large part of it, should be given the same rates as the north Texas group. Due to the substantial increase in its production in late years the Ranger group has been placed on the north Texas basis to Kansas City, St. Louis, and Chicago. The principal production in this group consists of casing-head or natural gasoline, and the bulk of the movement is to these points. The recent construction of several short lines reaching this group has
81 made available more direct routes and shortened the average distances therefrom to many points west of the river. By using the short workable routes embracing these new lines, interveners in this group arrive at distances which are less than those figured by defendants. For example, they compute distances from Ranger to St. Joseph, Omaha, Sioux City, and St. Paul which are, respectively, 17, 51, 69, and 24 miles less than defendants' distances. The average of defendants' distances from 11 refining points in the present Ranger group to Sioux City is 905 miles as compared with 810 miles figured by these interveners. The routes used by defendants are through Fort Worth, Tex., and Kansas City, and in many instances embrace as many lines as those used by the interveners.

The record does not show what the average distances would be as between the Ranger and north Texas groups even if distances from north Texas also were figured over routes used by these interveners to the extent available. However, while the excesses of the average distances from the Ranger group over the north Texas group are not as great as those computed by defendants, the distances from the Ranger group are substantially greater than those from the north Texas group to practically the whole of the destination territory involved. Under the circumstances, while we believe that a 3-cent differential of the Ranger group over the north Texas group is excessive, some difference is warranted.

As a table in an earlier part of this report will show, the average distances from the Shreveport-El Dorado group compare favorably with those from Group 3 to St. Louis and points beyond, but are substantially greater than the Group 3 averages to Kansas City and points beyond that gateway. Refiners in that group have undertaken to justify its continuance on the Group 3 basis of rates to all destinations, but particularly to points on and east of the river. Even to that territory the distances are slightly greater than from Group 3. The substantial differences in distances clearly warrant higher rates from the Shreveport-El Dorado group than Group 3 to the territory reached through the Kansas City gateway. Refiners in the El Dorado district in Arkansas do not object to being grouped

with Shreveport provided the greater average distances are not used as a basis for increasing their rates. The inclusion of Little Rock and Pine Bluff in this group has the effect of reducing the average distances therefrom. The rates from the south Texas group are among the lowest in the adjustment, distance considered. The present rates from this group are clearly preferential in many instances and should be realigned to bring them more in harmony with those observed from other groups.

82 The rates from the New Orleans-Baton Rouge group to St. Louis, Chicago, and intermediate points are on the Group 3 basis, although the distances are materially greater. The Illinois Central, a line of high density and low grades, leads directly from the New Orleans-Baton Rouge group to St. Louis, Chicago, and many other points. However, the favorable transportation conditions from the New Orleans-Baton Rouge group do not warrant the maintenance of that group on a parity with Group 3, considering the differences in distances. The rates to the rest of the destination territory generally are materially higher than the Group 3 rates, often by amounts clearly excessive compared with other differentials now in force or herein prescribed. Refiners at New Orleans, however, ship only to St. Louis and points in Illinois and do not appear to be interested in the rates to many of the other points involved. Consequently, our findings will include bases for rates from the New Orleans-Baton Rouge group to only a part of the destination territory.

The rates from the Shreveport-El Dorado and New Orleans-Baton Rouge groups to points in southern Illinois on and south of the Mobile & Ohio are lower than those from Group 3. This situation arises out of the maintenance of Group 3 rates from these two groups to St. Louis, to which the southern Illinois points are intermediate, while the rates from Group 3 are built differentially over St. Louis. The Oklahoma and Texas complainants object to this adjustment, claiming that, distance considered, the rates from Group 3 should be as low as, if not lower than, the rates from the Shreveport-El Dorado and New Orleans-Baton Rouge groups. The maintenance of St. Louis rates from the latter groups appears to be due primarily to the fourth section, and we find that no undue prejudice against Group 3 results therefrom.

Refiners at San Antonio are in immediate competition with refiners in the south Texas group. The San Antonio refiners testified that prior to March, 1923, when a parity of rates existed, they were able to market much of their output at points east of the Mississippi River. For this reason they had not sought particularly markets in western trunk-line territory. After the establishment in that month of the present basis of 2.5 cents over south Texas, practically all of this business was lost and, notwithstanding the fact that plant improvements have been made in order to reduce production costs, the refiners at San Antonio have been and are unable to operate their gasoline plants, being now limited largely to a production of

lubricating oils far below plant capacities. These interveners ask that they again be placed upon a parity with south Texas.

83 San Antonio takes the Houston, Tex., basis on practically all traffic except petroleum. Defendants concede that the transportation conditions are substantially similar as between San Antonio and Houston, and do not object to applying a parity of rates from the two points, provided the level of the rates is sufficiently high in their opinion to warrant their maintenance from San Antonio.

The distances from San Antonio to St. Louis and points beyond are materially greater than those from the south Texas group, and upon this record we are not prepared to find the San Antonio rates unduly prejudicial to the extent that they exceed the south Texas rates to this portion of the territory involved. To points to which the direct routes operate through Missouri River gateways, however, the differences in distances are small. For example, the San Antonio interveners show that the general average distance from the south Texas group as proposed by the Oklahoma and Texas complainants to 242 destinations, representative of most of the destination territory, would be 1,112 miles as compared with 1,121 miles from San Antonio. We are of the opinion that, speaking generally, to the territory west of the Mississippi River the rates from San Antonio should not exceed those from the south Texas group. The San Antonio basis should also apply from Somerset and Luling, Tex.

FUEL OIL

In the Midcontinent case we prescribed reasonable maximum rates on fuel oil and other low-grade oils to St. Louis and Chicago based on a differential of 5 cents under the refined-oil rates prescribed to those destinations, and said:

"What we have found with respect to rates on the lower grades of oil when shipped to St. Louis and Chicago, should be applied in just relationship to other points, although not specifically referred to in this proceeding."

The carriers failed to extend the application of the basis there prescribed to other destinations generally, and this resulted in the filing from time to time of many complaints against rates on fuel and kindred oils to points in this territory. In deciding such cases we have adhered to the basis prescribed in the Midcontinent case. There are now pending a large number of similar complaints. The difference, as affected by the general increases and reduction, is now generally 6.5 cents, although in some instances it is less.

The present complaints embrace the rates on fuel oil, but do not seek a change in the relationship to the refined-oil rates. The complainants expect that any changes made in the refined-oil

84 rates will be accompanied by like changes in the fuel-oil rates, except that in some instances the rates from Texas points are in excess of the usual differential basis, and in such instances the

establishment of rates upon that basis is asked. Defendants are of the view, in which some consumers concur, that there should be no definite relationship between the rates on fuel oil and those on gasoline, because of the differences in the competitive and other conditions, but, accepting the principle that such a relationship should exist as having been firmly established by us, they have submitted a proposal that the rates on fuel oil between the territories here concerned shall be upon the maximum basis of 85 per cent of the contemporaneous rates on gasoline between the same points. Fuel-oil and other low-grade products are subject to commercial influences different from those which affect gasoline. They are necessarily incident to the refining of gasoline and must be disposed of to prevent excess accumulations in storage as sometimes happens. Also, fuel oil is competitive with other fuels, principally coal. For these reasons, defendants propose the basis of 85 per cent as a maximum only, in order that they may be free to maintain lower rates, where necessary to meet special conditions, without affecting the level of the rates on gasoline between the same points or other rates on fuel oil.

Fuel oil differs from gasoline in the two important transportation respects of value and weight, in addition to the differences in commercial influences mentioned above. The value of fuel oil is not more than one-fourth that of gasoline. The respective estimated weights used for the assessment of transportation charges are 7.4 and 6.6 pounds per gallon. In several prior cases, including Pure Oil Company v. Director General, 56 I. C. C. 218, the carriers serving these territories suggested a basis of rates on fuel oil of 89.2 per cent of the rates on gasoline, that being the percentage which the estimated weight of gasoline is of that of fuel oil. That suggested basis was rejected by us for the principal reason that it reflected relative weights only and did not take into account other important elements of difference, such as that of value.

Defendants contend that the principle of a fixed differential is unsound in that it disregards the volume of the gasoline rate and the relation of the differential thereto, and that where the rates on gasoline are low, as for short hauls, it results in rates on fuel oil which are too low for the service performed.

Comparisons are made by the St. Louis interests of the present rate of 24 cents from Groups 2 and 3 to St. Louis, for the average short-line distance of 442 miles from the two groups, with rates for comparable distances under the scales maintained in Kansas, Oklahoma, Louisiana, and Texas, which are the same or slightly
85 lower than the rate here under consideration. For example, the rates in Kansas for 442 miles are 21.5 cents on fuel oil and 24 cents on gas oil for single or joint-line hauls; in Texas, 24 cents on fuel oil; and in Oklahoma, 21.5 cents on fuel oil for single-line and 23.5 cents for joint-line hauls. Other comparisons dealing with the measure of this rate are with rates from Kansas and Oklahoma to St. Louis of 17.5 cents on zinc spelter, oxide of zinc, and pig lead, and of 14.5 cents on smelter residuum, which produce materially lower

earnings per car and per car-mile, based on the minimum weights, than does fuel oil.

The intervening consumers of low-grade products generally express the view, which is coupled with the position which they take in opposition to any increases in the rates on such products, that there should be no definite relationship between the rates on the low-grade products and on gasoline, because of the differences between the two classes of products and the influences affecting their distribution, and also because the value or price of gasoline fluctuates to a greater extent than does that of fuel oil. It is contended, for instance, that fuel oil is a basic commodity which enters into manufacturing costs, and that any material changes in the costs thereof have a direct bearing upon the operations of competing plants. For example, reference is made to a manufacturer of clay products in Iowa using fuel oil which must meet the prices set by a larger manufacturer using coal and presumably would have to absorb any increase in its fuel rates. It also appears that some manufacturers have equipment for burning either fuel oil or coal. They are able to change from one to the other on short notice, and do not use oil if it is more costly than coal.

Several of the interveners contend that, if it is deemed proper that a percentage relationship shall exist between the rates on fuel oil and on gasoline, the rates on the former should not exceed 75 per cent of those on the latter product. This suggested figure is based on the fact that the rate prescribed on fuel oil to St. Louis in the Midcontinent case was 75 per cent of that prescribed on gasoline. The rate on fuel oil there prescribed was based on a fixed difference under the rate on gasoline, and the percentage relationship of the respective rates to St. Louis was incidental. For example, the rates prescribed to Chicago were 25 cents and 20 cents on refined and fuel oils, respectively, the rate on fuel oil being 80 per cent of that on refined. In the same case we prescribed a rate of 30 cents on refined oil from Group 3 to Milwaukee. Applying the 5-cent differential approved for fuel oil under refined oil it will be noted that the fuel-oil rate of 83⅓ per cent of that on refined.

86 It is proper, as we have consistently held, that the rates on fuel oil should be lower than those on gasoline. As before indicated, the maintenance by carriers of many rates on fuel oil the same as those on gasoline has been a source of constant litigation, even to the present time. It is desirable that a minimum difference between the rates on fuel and refined oils should be adopted in order to bring about an adjustment of rates which will remove this source of complaint.

Under the fixed differential basis the difference, in charges per car, of fuel oil under gasoline decreases as the volume of the rate increases. For example, the present rate of 36 cents on gasoline from Group 3 to Chicago yields $190.08 per car of 8,000 gallons, and the rate of 29.5 cents on fuel oil yields $174.64, or $15.44 less. Observing the 6.5-cent differential, the difference at Duluth, where the

gasoline rate is 49 cents, becomes $7.12. The charges per car would become the same when a rate of 60 cents on gasoline is reached, and beyond that fuel oil would pay more per car than gasoline. This appears to be contrary to sound principles of rate construction. If the characteristics of fuel oil warrant lower rates thereon than on gasoline, as they do, there is no valid reason why the differential or minimum difference under the gasoline rates should not bear a uniform relationship to the volume of such rates; otherwise, and as at present, the rates on fuel oil may be relatively too low for short hauls and relatively too high for long hauls. A percentage relationship would produce a slightly increasing difference in rates and in charges per car as the rate on gasoline increases.

Rates on fuel oil based on 85 per cent of the present rates on gasoline from Group 3 of 29.5 cents to St. Louis and 36 cents to Chicago would be 25 cents and 30.5 cents, as compared with the present rates of 24 cents and 29.5 cents, respectively. The corresponding rate differences would be 4.5 cents and 5.5 cents, or 1 cent less than the present differentials. A 75 per cent relationship would produce differences of 7.5 cents and 9 cents, or 2 cents and 2.5 cents, respectively, in excess of the present differentials. The following table shows the rates on gasoline hereinafter found reasonable, rates on fuel oil constructed on the respective bases of 85 per cent and 75 per cent thereof, and the resulting rate differences in cents:

From Group 3 to—	Rate found reasonable on gasoline	At 85 per cent of gasoline rate		At 75 per cent of gasoline rate	
		Rate	Rate difference	Rate	Rate difference
	Cents	*Cents*	*Cents*	*Cents*	*Cents*
Kansas City, Mo	27	23	4	20.5	6.5
Omaha, Ne r	33	28	5	25	8
St. Louis, o	32	27	5	24	8
Chicago, Ill	39	33	6	29.5	9.5
St. Paul, Minn	42	35.5	6.5	31.5	10.5

87 It will be noted that the rates on fuel oil to St. Louis and Chicago, for example, on the 85 per cent basis would be 3 cents and 3.5 cents, respectively, higher than the present rates, and, on the 75 per cent basis, the same as the present rates; that, on the former basis, the resulting rate differences would be less than the present usual differential of 6.5 cents at points taking rates lower than that to St. Paul; and that, on the latter basis, the rate differences would exceed the present usual differential at points beyond Kansas City.

In a number of cases we have prescribed maximum reasonable rates or scales of rates which were based on percentages of other rates. Such a method of constructing maximum rates on fuel oil and other low-grade oils would be an improvement over the method heretofore followed and would properly reflect principles of rate progression and relationship which are not now observed. However,

having regard for the interests of all concerned, and the desirability of avoiding too great fluctuations from the present rates under average conditions, a maximum basis on the low-grade oils of 80 per cent of the rates on gasoline commends itself more than either of the bases suggested by the parties. That basis would produce maximum rates from Group 3 of 25.5 cents to St. Louis, 31 cents to Chicago, and 30.5 cents to Mason City, compared with present rates of 24 cents to St. Louis, 29.5 cents to Chicago, and 33.5 cents to Mason City. To St. Louis and Chicago those rates would be higher than the present rates and to Mason City lower. However, even to St. Louis and Chicago the differences of fuel oil under refined oil will be greater than exist at present. The differences at points beyond Kansas City generally grade upward from the present usual differential of 6.5 cents.

CONCLUSIONS

We find that the rates assailed on gasoline and other so-called refined oils now taking the same rates, in carloads, are as a whole not in excess of reasonable maximum rates, but that said rates are unduly prejudicial or preferential as between the various origin groups and also as between the various destination points. We further find that the rates or bases of rates set forth in Appendix 5 hereto will be for the future, just, reasonable, and nonprejudicial for application on gasoline and other so-called refined oils now taking the same rates, in carloads, from and to the groups or points there shown. The rates or bases of rates found reasonable are to representative destinations. Defendants should adjust the rates to other destinations in proper relationship thereto.

We further find that the rates on the same commodities, in carloads, from points in Group 2 to St. Joseph, Mo., are, and for
88 the future will be, unreasonable and unduly prejudicial to the extent that they exceed, or may exceed, the rates contemporaneously maintained from the same points of origin to Kansas City, Mo.

We further find that the rates in issue on fuel oil and other low-grade petroleum products, in carloads, are, and for the future will be, unreasonable to the extent that they exceed, or may exceed, 80 per cent of the contemporaneous rates on gasoline, in carloads, between the same points, fractions of a cent to be resolved to the nearest half cent.

These findings are not to be understood as authorizing any increases in the rates from Group 3 to points in North Dakota and South Dakota, in Minnesota beyond St. Paul, and in the northern peninsula of Michigan to which the rates from Groups 2 and 3 are now the same, in establishing differentials of Group 1 and 2 under Group 3.

The reasonable basis of rates prescribed on fuel oil is a maximum only. It is recognized that conditions may exist or arise which will warrant lower rates in some instances. Also, this prescription of a

maximum reasonable general basis of rates does not carry with it approval as inherently or relatively lawful of any rate between any particular points which may be increased to or reflect that maximum basis. Any such rate will be subject to further consideration in an appropriate proceeding.

Defendants will be expected to give effect to our findings within 120 days from the service of this report, or within such further reasonable time as they may represent to be necessary, failing which we will consider the entry of such order or orders as the circumstances may require.

By the commission.

[SEAL.] GEORGE B. MCGINTY,
Secretary.

89 APPENDIX 1

ROUGH DESCRIPTIONS OF PRESENT AND PROPOSED MID-CONTINENT OIL-RATE GROUPS

(Present groups)

Group 1 embraces Kansas City, Mo., and other points in the so-called Lower Missouri River group.

Group 2 includes all shipping points in Kansas. The extreme points are Hutchinson, Florence, and Moran on the north; Moran and Joplin, Mo., on the east; Joplin, Coffeyville, and Arkansas City on the south; and the latter point and Hutchinson on the west.

Group 3 embraces all shipping points in Oklahoma, except Devol, and extends in a northeasterly and southwesterly direction across the State.

The Burkburnett or north Texas group embraces points in northern Texas such as Burkburnett, Electra, Wichita Falls, and Denison on the north, and Graham, Fort Worth, Dallas, and Mexia on the south.

The Ranger group, lying to the south and west of the north Texas group, includes such points as South Bend, Breckenridge, Ranger, Abilene, and Gorman, Tex.

The Shreveport-El Dorado group extends from Little Rock, Ark., on the north to Crichton, La., on the south, and embraces such other points as Pine Bluff and El Dorado, Ark., Texarkana, Ark.-Tex., and Oil City and Shreveport, La.

The New Orleans-Baton Rouge group includes the points named and others adjacent.

The south Texas group embraces such points as Houston, Beaumont, Port Arthur, Orange, Texas City, Bryanmound, and Smiths Bluff, Tex., and West Lake, La.

San Antonio lies to the west of the south Texas group and adjacent thereto are Somerset and Luling, Tex., which take somewhat

higher rates. Alexandria is in central Louisiana. Fort Smith, Ark., a refining point, is in western Arkansas and takes rates the same as or 1.5 cents over Group 3.

(Grouping proposed by Oklahoma and Texas complainants)

These complainants propose a division of the origin territory into nine groups, which follow:

Group 1, the same as the present group of that designation.

Group 2, all Kansas points embraced in the present Group 2 and also points in northeastern Oklahoma within an area bounded on the north by the State boundary and including such border points as Blackwell, Ponca City, and Cushing, on the west, Stroud, Bryant, and Bartlett, on the south, and Muskogee, Wagoner, and Vinita on the east.

Group 3, embracing points in northern-central Oklahoma such as Enid, Fairmount, Covington, and Garber and all shipping points in that State to the south of Group 2, to and including Wynnewood.

Group 4, points in southern Oklahoma and in northern Texas; the inclusive border points being Ardmore, Healdton, Rush Springs, and Cyril, Okla., on the north, Frederick, Okla., and Electra, Tex., on the west, Wichita Falls, Henrietta, Fort Worth, Waxahachie, Corsicana, and Nacogdoches, Tex., on the south, and the latter point and Paris, Tex., on the east.

90 Group 5, points in the present Ranger group and some additional surrounding points including Megargel, Sweetwater, Colorado, Brownwood, Waco, Thrall, Herne, and Mexia, Tex.

Group 6, points in the present south Texas group and in addition San Antonio, Somerset, and Luling, Tex.

Group 7, all points in Arkansas and points in north-central Louisiana north of and including Homer, Lamkin, Fairbanks, and Swartz.

Group 8, other points in Louisiana to and including Alexandria on the south.

Group 9, New Orleans, Baton Rouge, and adjacent points such as Plaquemine, Good Hope, and Chalmette, La.

(Grouping proposed by defendants)

Defendants propose 14 origin groups. These are the following:

Group 1, as at present.

Group 2, points in southeastern Kansas, including Moran, Humboldt, Neodesha, and Caney on the north and west, and Coffeyville and Joplin on the south and east.

Group 2½, the remaining points in the present Group 2, situated towards southern-central Kansas.

Group 3, points in northern Oklahoma north of Oklahoma City, Wewoka, and Allen. This group would include such points as Tulsa, Enid, Ponca City, Guthrie, and Muskogee.

Group 4, Oklahoma City and other points in central Oklahoma.

Group 5, points in southern Oklahoma, including Cyril on the north, Frederick and Grandfield on the west, and Ardmore on the east.

Group 6, approximately the present Burkburnett or north Texas group, with the addition of Paris, Tex.

Group 7, the present Ranger group with the addition of Sweetwater, Colorado, and Brownwood, Tex.

Group 8, the present south Texas group extended to the north to include Waco and Nacogdoches.

Group 9, San Antonio, Somerset, and Luling.

Group 10, Fort Smith, Ark.

Group 11, Little Rock and Pine Bluff, Ark.

Group 12, Texarkana, Tex.-Ark., and Smackover and El Dorado, Ark., on the north to and including Crichton, La., on the south.

Group 13, New Orleans, Baton Rouge, and adjacent points in Louisiana.

Group 14, Alexandria, La.

Rates on refined oil, in carloads

To—	From Group 1		From Group 2		From Group 3		From north Texas		From Ranger		From San Antonio		From south Texas		From Shreveport-Eldorado		From New Orleans	
	Distance	Rate	Distance	Rate	Distance	Rate	Distance	Rate	Distance [1]	Rate	Distance [1]	Rate	Distance [2]	Rate	Distance	Rate	Distance	Rate
	Miles	*Cents*	*Miles*	*Cents*	*Miles*	*Cents*	*Miles*	*Cents*	*Miles*	*Cents*	*Miles*	*Cents*	*Miles*	*Cents*	*Miles*	*Cents*	*Miles*	*Cents*
Kansas City, Mo			161	17.5	339	24	524	29.5	627	29.5	788	34.5	766	32	573	29.5	866	48
Des Moines, Iowa	218	24	365	29.5	539	33	737	35.5	842	38.5	1,006	38	983	35.5	778	48	1,037	50.5
Cedar Rapids, Iowa	297	26.5	458	33	636	34	822	36.5	924	39.5	1,085	39	1,063	36.5	831	34	1,000	50.5
Mason City, Iowa	346	31.5	507	38	683	40	871	42.5	974	45.5	1,134	45	1,112	42.5	902	40	1,137	52.5
Fort Dodge, Iowa	304	29.5	456	36	624	38.5	823	41	928	44	1,092	43.5	1,070	41	864	38.5	1,123	54
Omaha, Nebr	200	24	345	29.5	518	33.5	719	36	820	39	984	38.5	963	36	773	33.5	1,063	54
Lincoln, Nebr	206	24	314	29.5	485	33.5	[1] 654	36	766	39	923	38.5	963	36	787	33.5	1,063	57.5
Hastings, Nebr			359	35.5	533	39.5							1,029	61	852	58.5	1,128	78
North Platte, Nebr			496	51.5	670	55.5							1,166	75.5	990	73	1,266	93
Sioux City, Iowa	288	29.5	434	36	610	39.5	807	42	912	45	1,076	44.5	1,054	42	862	39.5	1,154	56.5
Sioux Falls, S. Dak	403	37	4,547	43	722	43	922	45.5	1,004	48.5	1,168	48	1,169	45.5	977	43	1,269	59
Watertown, S. Dak	537	52	652	58.5	824	58.5	1,025	61					1,272	61	1,080	58.5	1,372	77.5
Fargo, N. Dak	673	64	816	70	991	70	1,192	72.5					1,438	72.5	1,247	70	1,498	86.5
Bismark, N. Dak			1,075	93	1,254	93							1,682	95.5	1,495	93	1,687	108
St. Louis, Mo	278	26	416	29.5	549	29.5	759	32	838	32	936	34.5	769	32	539	29.5	697	29.5
Quincy, Ill	226	26	380	29.5	529	29.5	[1] 757	32	853	35	1,014	41	905	38.5	658	29.5	834	36
Keokuk, Iowa	260	26	423	31	599	31	752	33.5	887	36.5	1,048	36	940	33.5	707	31	868	36
Dubuque, Iowa	411	28	562	34	735	34	936	36.5	1,030	39.5	1,193	39	1,096	36.5	862	34	1,018	41.5
Springfield, Ill	299	29.5	456	33	607	33	789	35.5	883	38.5	1,024	41	865	38.5	632	[3] 35.5	794	36
Peoria, Ill	325	29.5	486	33	657	33	840	35.5	940	38.5	1,087	41	929	38.5	695	[3] 35.5	829	36
Chicago, Ill	452	32.5	613	26	783	36	970	38.5	1,068	38.5	1,211	41	1,051	38.5	817	36	912	36
Rockford, Ill	433	32.5	594	38.5	769	38.5	958	41	1,057	41	1,218	43.5	1,104	41	870	38.5	963	36
Milwaukee, Wis	516	36	674	39.5	852	39.5	1,041	42	1,142	45	1,293	44.5	1,136	42	902	39.5	997	39.5
Green Bay, Wis	624	38.5	786	44.5	964	44.5	[1] 1,159	47	1,254	50	1,405	49.5	1,391	47	1,071	44.5	1,109	52.5
Wausau, Wis	657	38.5	824	44.5	992	44.5	1,182	47	1,283	50	1,446	49.5	1,310	47	1,063	44.5	1,225	52.5
Escanaba, Mich			925	56.5	1,103	56.5							1,366	59	1,112	56.5	1,227	57
Ashland, Wis	666	43	826	49	1,005	49	1,191	51.5					1,432	51.5	1,206	49	1,347	60
St. Paul, Minn	483	37	644	43	822	43	1,008	48.5	1,110	48.5	1,271	48	1,249	45.5	1,034	43	1,255	52.5
Duluth, Minn	634	43	795	49	973	49	1,159	51.5	1,263	54.5	1,424	54	1,406	51.5	1,185	49	1,406	
Willmar, Minn	513	37	659	43	834	43	1,032	45.5					1,279	45.5	1,087	43	1,379	71
Bemidji, Minn	[4] 713	64.5	876	70.5	1,050	70.5							1,461	73	1,298	70.5	1,481	82.5

[1] Short-line distances over routes embracing not more than three lines, except where a greater number are necessary.
[2] Distances from Beaumont, Tex., as representative.
[3] Average rate.
[4] Short-line distance.

TABLE 1.—*Percentages which the distances and rates from Group 1 are of the distances and rates from other indicated groups, on refined oil, in carloads*

Destination	Group 2		Group 3		North Texas		South Texas		Shreveport-El Dorado	
	Distance	Rate	Distance	Rate	Distance	Rate	Distance	Rate	Distance	Rate
	Per ct.	*Per ct.*	*Per ct.*	*Per ct.*	*Per ct.*	*Per ct.*	*Per ct.*	*Per ct.*	*Per ct.*	*Per ct.*
Des Moines, Iowa	59.6	81.4	40.3	72.7	29.5	67.6	21.5	67.6	28	72.7
Cedar Rapids, Iowa	64.7	80.3	46.5	78	36.1	72.6	27.2	72.6	35.7	78
Mason City, Iowa	68.2	28.9	50.1	78.7	39.7	74.1	30.4	74.1	38.3	78.7
Omaha, Nebr	57.6	81.4	37.7	71.6	27.8	66.7	20.1	66.7	25.8	71.6
Sioux City, Iowa	66.2	82.9	47.2	74.7	35.6	70.2	26.6	70.2	33.4	74.7
Sioux Falls, S. Dak	73.3	86	55.6	86	43.7	81.3	33.7	81.3	41.2	86
Watertown, S. Dak	76.8	88.9	60.9	88.9	52.4	85.2	41.3	85.2	49.7	88.9
St. Louis, Mo	66.8	88.1	49.7	88.1	36.6	81.3	32.9	81.3	51.5	88.1
Keokuk, Iowa	62.1	83.9	44	83.9	34.5	77.6	25.3	77.6	36.7	83.9
Dubuque, Iowa	73	82.4	55.5	82.4	43.9	76.7	34.8	76.7	47.6	82.4
Peoria, Ill	66.9	89.4	48.9	89.4	38.7	83.1	30.5	83.1	46.7	83.1
Chicago, Ill	73.7	90.3	57.2	90.3	46.5	84.4	38.8	84.4	55.3	90.3
Rockford, Ill	72.8	84.4	55.7	84.4	45.2	79.3	35.9	79.3	49.7	84.4
Milwaukee, Wis	76.1	91.1	60	91.1	49.6	85.7	41.7	85.7	57.2	91.9
Wausau, Wis	80.2	86.5	65.6	86.5	55.6	81.9	46.7	81.9	61.8	86.5
St. Paul, Minn	75	86	58.2	86	47.9	81.3	37.8	81.3	46.7	86
Duluth, Minn	79.7	87.8	64.9	87.8	54.7	83.5	44.4	83.5	53.5	87.8

TABLE 2.—*Percentages which the distances and rates from the groups and points shown are of those from Group 2*

Destination	Group 3		El Dorado [1]		Shreveport [1]		New Orleans [1]		South Texas [1]	
	Distance	Rate	Distance	Rate	Distance	Rate	Distance	Rate	Distance	Rate
	Per ct.	*Per ct.*	*Per ct.*	*Per ct.*	*Per ct.*	*Per ct.*	*Per ct.*	*Per ct.*	*Per ct.*	*Per ct.*
Des Moines, Iowa	147.8	111.8	227.8	111.8	212.8	111.8	284	171.2	269.2	120.3
Cedar Rapids, Iowa	138.7	103	173.9	103	187	103	218	153	231.7	110.6
Mason City, Iowa	134.5	105.3	183.9	103	178 4	105.3	224.1	138.2	217.2	111.8
Omaha, Nebr	150	113.6	236.8	113.6	219.3	113.6	308	183.1	279	122
Sioux City, Iowa	139.8	103	209.2	109	195.2	109.7	265.7	156.9	242.6	116.7
Sioux Falls, S. Dak	132	100	187	100	175.9	100	231.6	137.2	213	105.6
Watertown, S. Dak	126.4	100	172.7	100	163.4	100	210.3	132.5	159.7	104.2
St. Louis, Mo	132.1	100	118.1	100	135.1	100	167.3	100	160.6	108.4
Keokuk, Iowa	141.6	100	156.7	100	173.4	100	205.1	115.3	222.2	108
Dubuque, Iowa	130	100	144.7	100	158.2	100	181.5	122.1	194.9	107.3
Peoria, Ill	135.1	100	134.2	100	148.7	105.1	170.5	109	190.9	116.7
Chicago, Ill	127.8	100	124.1	100	137.8	100	148.7	100	171.2	106.9
Rockford, Ill	129.4	100	136.7	100	151.1	100	162	96.1	185.7	106.4
Milwaukee, Wis	126.3	100	125.3	100	137.8	100	141.8	105.1	168.4	106.3
Wausau, Wis	121.2	100	123.5	100	133.9	100	148.3	117.9	158.9	103.6
St. Paul, Minn	127.5	100	168.9	100	161.9	100	194.7	122	193.8	105.9
Duluth, Minn	122.3	100	156	100	150.8	100	176.7	122.4	176.7	105.1

[1] Proper.
[2] Beaumont as representative.

93 TABLE 3.—*Actual differences between distances and rates, where existent, between Groups 1 and 2 on one hand and Group 3 on the other hand, and the differentials under Group 3 proposed*

Destination	Group 1 under Group 2		Group 1 under Group 3		Group 2 under Group 3		Differentials sought	
	Distance	Rate	Distance	Rate	Distance	Rate	Group 1 under Group 3	Group 2 under Group 3
	Miles	*Cents*	*Miles*	*Cents*	*Miles*	*Cents*	*Cents*	*Cents*
Des Moines, Iowa	148	5.5	323	9	174	3.5	13	5
Cedar Rapids, Iowa	162	6.5	342	7.5	177	1	11	5
Mason City, Iowa	161	6.5	344	8.5	177	2	11	5
Omaha, Nebr	147	5.5	330	9.5	173	4	13.5	5
Sioux City, Iowa	147	6.5	322	10	174	2.5	13.5	4
Sioux Falls, S. Dak	147	6	322	6	176	------	13.5	4
Watertown, S. Dak	162	6.5	344	6.5	173	0	11	4
St. Louis, Mo	138	3.5	281	3.5	132	0	8.5	2.5
Keokuk, Iowa	159	5	331	5	176	0	8.5	4
Dubuque, Iowa	152	6	330	6	173	0	10	4
Peoria, Ill	161	3.5	339	3.5	171	0	8.5	3
Chicago, Ill	161	3.5	338	3.5	171	0	8.5	3
Rockford, Ill	162	6	344	6	175	0	11	3
Milwaukee, Wis	162	3.5	344	3.5	177	0	8.5	3
Wausau, Wis	162	6	344	6	175	0	11	3
St. Paul, Minn	161	6	346	6	178	0	11	4
Duluth, Minn	161	6	343	6	178	0	10	4

APPENDIX 4

Earnings on refined oil, in carloads, under present and proposed rates

To—	From Group 1					From Group 2				
	Present		Proposed			Present		Proposed		
	Ton-mile earnings	Car-mile earnings	Rate	Ton-mile earnings	Car-mile earnings	Ton-mile earnings	Car-mile earnings	Rate	Ton-mile earnings	Car-mile earnings
	Mills	*Cents*	*Cents*	*Mills*	*Cents*	*Mills*	*Cents*	*Cents*	*Mills*	*Cents*
Kansas City, Mo						21.61	57.04	17.5	21.61	57.04
Des Moines, Iowa	22.02	58.12	20	18.3	48.4	16.16	42.67	28	15.34	40.5
Cedar Rapids, Iowa	17.85	47.10	23	15.5	40.89	14.38	37.96	29	12.64	33.36
Mason City, Iowa	18.21	48.06	29	16.7	44.2	14.99	39.57	35	13.81	36.45
Fort Dodge, Iowa	19.41	51.23	27	17.7	46.9	15.75	41.59	33.5	14.66	38.7
Omaha, Nebr	24	63.36	20	20	52.8	17.1	45.15	28.5	16.52	43.62
Lincoln, Nebr	23.3	61.5	------	------	------	18.79	49.60	28.5	18.15	47.92
Hastings, Nebr	------	------	------	------	------	19.5	52.21	34.5	19.22	50.74
North Platte, Nebr	------	------	------	------	------	20.77	54.82	50.5	20.36	53.76
Sioux City, Iowa	20.49	54.08	26	14.5	47.68	16.59	43.8	34.5	15.89	41.97
Sioux Falls, S. Dak	18.36	48.47	29.5	14.64	38.65	15.72	41.51	39	14.26	37.65
Watertown, S. Dak	19.37	51.12	47.5	17.69	46.7	17.91	47.36	54.5	16.72	44.13
Fargo, N. Dak	19.02	50.21	60	17.83	47	17.14	45.24	66	16.15	42.65
Bismarck, N. Dak	------	------	------	------	------	17.21	45.68	89	16.56	43.71
St. Louis, Mo	18.71	49.38	21	15.11	40	14.15	37.35	27	12.96	34.19
Quincy, Ill	------	------	------	------	------	15.49	40.88	27	14.17	37.42
Keokuk, Iowa	20	52.8	22.5	17.31	45.7	14.66	38.7	27	12.77	33.7
Dubuque, Iowa	13.63	35.97	24	11.08	30.83	12.10	31.94	30	10.68	28.19
Springfield, Ill	19.73	52.09	24.5	16.38	46.6	14.47	38.21	30	13.16	34.74
Peoria, Ill	18.15	47.92	24.5	15.07	42.88	13.58	35.85	30	12.35	31.04
Chicago, Ill	14.38	37.96	27.5	12.16	32.12	11.74	31	33	10.76	28.42
Rockford, Ill	15.01	39.61	27.5	12.7	33.53	12.96	34.22	35.5	11.95	31.55
Milwaukee, Wis	13.95	36.83	31	12.01	31.72	11.70	30.9	36.5	10.81	28.55
Green Bay, Wis	12.3	32.4	------	------	------	11.31	29.86	41.5	10.55	27.84
Wausau, Wis	11.72	30.94	33.5	10.2	26.92	10.81	28.51	41.5	10.07	26.59
Escanaba, Mich	------	------	------	------	------	12.2	32.22	53.5	11.55	30.51
Ashland, Wis	12.91	34.09	39	11.71	30.92	11.85	31.28	45	10.88	28.73
St. Paul, Minn	15.32	40.44	32	13.25	35	13.35	35.25	39	12.11	31.98
Duluth, Minn	13.56	35.81	39	12.3	32.48	12.33	32.54	45	11.33	29.89
Willmar, Minn	14.42	38.08	32	12.47	32.93	13.05	34.45	39	11.84	31.25
Bemidji, Minn	------	------	------	------	------	16.1	42.49	66.5	15.18	40.1

94 ***Earnings on refined oil, in carloads, under present and proposed rates—*** **Continued**

To—	From Group 3		From north Texas		From south Texas		From Shreveport-El Dorado	
	Ton-mile earnings	Car-mile earnings	Ton-mile earnings	Car-mile earnings	Ton-mile earnings	Car-mile earnings	Ton-mile earnings	Car-mile earnings
	Mills	*Cents*	*Mills*	*Cents*	*Mills*	*Cents*	*Mills*	*Cents*
Kansas City, Mo.	14.16	37.32	11.2	29.3	8.42	22.06	10.02	26.46
Des Moines, Iowa	12.24	32.33	9.63	25.43	7.03	18.55	8.49	22.39
Cedar Rapids, Iowa	10.69	28.23	8.88	23.44	6.77	17.69	8.19	21.60
Mason City, Iowa	11.70	30.88	9.76	25.76	7.47	19.71	8.87	23.41
Fort Dodge, Iowa	12.34	32.58	9.96	26.30	7.48	19.75	8.91	23.52
Omaha, Nebr.	12.92	34.15	10.01	26.43	7.48	19.75	8.67	22.88
Lincoln, Nebr.	13.81	36.47	11	29.06	7.48	19.16	8.52	22.51
Hastings, Nebr.	14.82	39.13	-------	-------	11.86	31.3	13.74	36.27
North Platte, Nebr.	16.57	43.74	-------	-------	12.95	34.19	14.76	38.97
Sioux City, Iowa	12.97	34.30	10.41	27.47	7.78	20.53	9.17	24.19
Sioux Falls, S. Dak.	11.89	31.46	9.87	26.05	7.62	20.03	8.8	23.23
Watertown, S. Dak.	14.18	37.44	11.90	31.42	9.40	24.81	10.83	28.6
Fargo, N. Dak.	14.11	37.26	12.17	32.11	9.90	26.12	11.23	29.65
Bismarck, N. Dak.	14.83	39.16	-------	-------	11.36	29.98	12.44	24.68
St. Louis, Mo.	10.75	28.34	8.4	22.3	7.58	20.01	10.95	28.88
Quincy, Ill.	11.15	29.45	8.4	22.3	7.07	18.67	9.62	24.60
Keokuk, Iowa	10.37	27.33	8.91	23.52	6.54	17.27	8.77	23.1
Dubuque, Iowa	9.25	24.43	7.80	20.58	6.19	16.35	17.89	20.82
Springfield, Ill.	10.85	26.48	9	23.75	7.10	18.74	11.24	29.65
Peoria, Ill.	10.05	26.52	8.45	22.31	6.67	17.61	10.22	26.96
Chicago, Ill.	9.21	24.25	7.94	20.95	6.63	17.49	8.81	23.25
Rockford, Ill.	10.01	26.44	8.56	22.59	6.81	17.98	8.85	23.36
Milwaukee, Wis.	9.27	24.48	8.07	21.30	6.79	17.92	8.76	23.12
Green Bay, Wis.	9.02	24.37	8.1	21.4	6.76	17.84	8.4	22.18
Wausau, Wis.	8.93	23.52	7.95	20.99	6.69	17.67	8.37	22.1
Escanaba, Mich.	10.02	27.05	-------	-------	8.64	22.8	10.12	26.25
Ashland, Wis.	9.75	25.74	8.65	22.83	7.06	18.65	8.13	21.45
St. Paul, Minn.	10.46	27.62	9.03	23.83	7.14	18.84	8.32	21.95
Duluth, Minn.	10.08	26.59	8.89	23.46	7.22	19.06	8.27	21.83
Willmar, Minn.	10.3	27.19	8.82	23.27	6.97	18.4	7.91	20.88
Bemidji, Minn.	13.43	35.45	-------	-------	10.5	26.03	10.86	28.68

APPENDIX 5

Rates or bases of rates found reasonable on gasoline and other refined oils, in carloads

To—	Rate from Group 3	Differentials under Group 3		Differentials over Group 3					
		From Group 1	From Group 2	From north Texas group	From Ranger group	From Shreveport-El Dorado group [1]	From New Orleans	From south Texas group	From San Antonio [1]
	Cents	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*
Kansas City, Mo.	27	-------	7	4	5.5	4.5	-------	7	7
Des Moines, Iowa	33	9	3.5	2.5	4	3	-------	5.5	5.5
Cedar Rapids, Iowa	35.5	8	2.5	2.5	4	3	-------	5.5	5.5
Fort Dodge, Iowa	36.5	8	2.5	2.5	4	3	-------	5.5	5.5
Mason City, Iowa	38	7	2	2.5	4	3	-------	5.5	5.5
Omaha, Nebr.	33	9	3.5	2.5	4	3	-------	5.5	5.5
Lincoln, Nebr.	33	9	3.5	2.5	4	3	-------	5.5	5.5
Sioux City, Iowa	36	8	2.5	2.5	4	3	-------	5.5	5.5
Sioux Falls, S. Dak.	40	7	2	2.5	4	3	-------	5.5	5.5
St. Louis, Mo.	32	7	2	2.5	4	0	1.5	3	4.5
Keokuk, Iowa	33.5	7	2	2.5	4	0	-------	3	4.5
Dubuque, Iowa	38	7	2	2.5	4	1.5	-------	4	5
Peoria, Ill.	36	7	2	2.5	4	0	1.5	3	4.5
Chicago, Ill.	39	7	2	2.5	4	0	1.5	3	4.5
Milwaukee, Wis.	42	7	2	2.5	4	0	-------	3	4.5
Wausau, Wis.	46	7	2	2.5	4	1.5	-------	4	5
St. Paul, Minn.	42	7	2	2.5	4	3	-------	5.5	5.5
Duluth, Minn.	47	7	2	2.5	4	3	-------	5.5	5.5

[1] Where zero is shown the rates shall be the same as Group 3.
[2] The bases prescribed from San Antonio shall also apply from Somerset and Luling, Tex.

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13087

Exhibit B petition

Interstate Commerce Commission

Midcontinent Oil Rates, 1925

No. 15584[1]

Sinclair Refining Company et al. *v.* Ahnapee & Western Railway Company et al.

Decided March 5, 1928

Rates on gasoline and other petroleum products from the midcontinent field to points in South Dakota, North Dakota, and northwestern Minnesota, and from Whiting, Ind., Casper and Osage, Wyo., and Miles City, Lewiston, and Great Falls, Mont., to points in South Dakota found unreasonable and in certain instances unduly prejudicial. Reasonable and nonprejudicial rates prescribed for the future. Reparation denied. Prior reports, 112 I. C. C. 421, 132 I. C. C. 103, and 136 I. C. C. 140.

P. R. Wigton for complainant in No. 16309; and Karl Knox Gartner for complainants in No. 17304.

R. L. Dillman and D. L. Kelley for Board of Railroad Commissioners of South Dakota; and E. M. Hendricks for Board of Railroad Commissioners of North Dakota.

H. L. McReynolds and L. R. Cowles for White Eagle Oil & Refining Company; H. C. Wilson for Traffic Bureau of Chamber of Commerce of Sioux City, Iowa; R. D. Springer for Traffic Bureau of Chamber of Commerce of Sioux Falls, S. Dak.; W. G. Lyons for Chamber of Commerce of Mitchell, S. Dak.; and R. A. Jacobson for Chamber of Commerce of Yankton, S. Dak.

M. M. Joyce, R. J. Hagman, A. H. Lossow, J. N. Davis, A. B. Enoch, E. A. Smith, Walter McFarland, P. F. Gault, Earl E. Overton, and M. L. Countryman, jr., for defendants in Nos. 16309 and 17304.

Other appearances shown in prior reports.

SECOND SUPPLEMENTAL REPORT OF THE COMMISSION

McMANAMY, Commissioner:

In our original report herein, 112 I. C. C. 421, we reserved for further consideration, with other pending cases, the matter of rates on petroleum and petroleum products from the territory of

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[1] This report also embraces No. 15585, Miller Petroleum Company et al v. Atchison, Topeka & Santa Fe Railway Company et al.; No. 16065, Barnsdall Refining Company et al. v. Louisiana & Arkansas Railway Company et al.; No. 16066 North Texas Petroleum Traffic Bureau v. Same; No. 16309, South Dakota Independent Oil Jobbers Association v. Atchison, Topeka & Santa Fe Railway Company et al.; and No. 17304, International Oil Company et al. v. Abilene & Southern Railway Company et al.

96 origin covered by the proceeding to northern Nebraska, South Dakota, North Dakota, and northwestern Minnesota. The present report pertains to rates to that territory and embraces the related cases hereinafter discussed which were heard separately. Rates will be stated in cents per 100 pounds and unless otherwise indicated are those applying on refined oils. The term refined oils as used herein refers to gasoline and other petroleum products which usually take the same rates as gasoline.

Complainants in Nos. 16309 and 17304 are distributors of petroleum products. In No. 16309 it is alleged that the rates on petroleum and its products from points in Missouri, Kansas, Arkansas, Oklahoma, Indiana, Illinois, Wisconsin, Montana, and Wyoming to destinations in South Dakota are unjust and unreasonable, and unduly prejudicial as compared with relatively lower rates from the same points of origin to destinations in Iowa, Minnesota, and Nebraska, and in South Dakota on the line of the Chicago, Milwaukee & St. Paul[2] from Sioux City, Iowa, to and including Sioux Falls, S. Dak. We are asked to prescribe reasonable and nonprejudicial rates for the future. The Board of Railroad Commissioners of the State of South Dakota, the chambers of commerce of Mitchell and Yankton, S. Dak., the traffic bureaus of the chambers of commerce of Sioux City and Sioux Falls, and the White Eagle Oil & Refining Company intervened. With the exception of the Traffic Bureau of the Sioux City Chamber of Commerce, interveners actively support the contentions of complainant. The Sioux City intervener is not opposed to a readjustment of rates to South Dakota but wants left undisturbed the existing relationship of Sioux City to Omaha, Nebr., Des Moines, Iowa, and Twin Cities, Minn. The White Eagle Oil & Refining Company is particularly interested in origin relationships and requests that those prescribed in our original report herein be adopted in fixing rates to the territory covered by this complaint.

In No. 17304 it is alleged that the rates on petroleum and its products from Texas, Oklahoma, Kansas, and Missouri to designated destinations in North Dakota, and in Minnesota north and west of the line of the Great Northern from Duluth, Minn., to Pipestone, Minn., herein designated northwestern Minnesota, are unreasonable. Reparation and reasonable rates for the future are prayed for. The Board of Railroad Commissioners of the State of North Dakota and the White Eagle Oil & Refining Company intervened in support of the complaint. The latter seeks reparation.

Exceptions were filed by complainants and defendants to the reports of the examiners in Nos. 16309 and 17304 and the cases
97 were orally argued. Our conclusions differ somewhat from those recommended by the examiners. The term complainants will be used hereinafter to designate collectively those who are seeking reductions in the rates.

[2] Now Chicago, Milwaukee, St. Paul & Pacific.

RATES TO SOUTH DAKOTA

Prior to Codington County Oil Co. v. A., T. & S. F. Ry. Co., 53 I. C. C. 234, joint rates on refined oils from the mid-continent field to interior South Dakota points were made by adding the full fifth-class rates from Sioux City, Sioux Falls, or Pipestone, Minn., to the commodity rates to those border points. The commodity rates to the border points were prescribed in, or were the outgrowth of, Midcontinent Oil Rates, 36 I. C. C. 109. In the Codington case we found that the existing rates from the mid-continent field to South Dakota were not unreasonable but that they were unduly prejudicial to the extent that they exceeded rates made by adding 75 per cent of the fifth-class rates from the border points to the commodity rates to those points. In publishing rates in purported compliance with our findings therein, defendants used the full commodity rates to the border points, which commodity rates included the 4.5-cent increase authorized by the Director General of Railroads in lieu of a 25 per cent increase on petroleum products, plus 75 per cent of the full fifth-class rates from the border points, which class rates included the 25 per cent increase authorized by General Order No. 28. Freight-rate authority No. 96, which authorized the increase of 4.5 cents, provided that this increase should be applied but once to continuous through hauls whether the applicable rates were on combination or joint basis. Complainants show that the rates established by the carriers were in many instances higher than the rates attacked and widened the spread over the border points; that to certain points the present rates are from 0.5 to 12.5 cents higher than they would be were they constructed to reflect the sum of the commodity rates to the border points and fifth-class rates beyond reduced in accordance with current tariffs to include the general increases but once in the through charge; and that in some instances the present rates are in excess of the aggregate of the commodity rates to the border points plus the fifth-class rates beyond.

In Appendix A are set forth rates on refined oils from mid-continent Group 3 to representative destinations in South Dakota, together with rates which we prescribed in our original report herein from Group 3 to Sioux City and Sioux Falls. Numerous comparisons of the rates attacked with rates on other commodities and various bases for readjustment of the rates from the mid-continent field to South Dakota are submitted by complainants. De-
98 fendants have also offered many comparisons of the rates assailed and earnings thereunder with rates and earnings on other commodities to support their contention that the present rates are not unreasonably high. We do not consider it necessary to discuss all of these in detail. One of the principal comparisons offered by complainants contrasts the rates on refined oils from the mid-continent field with the joint-line vegetable-oils scale prescribed in Oklahoma Corporation Commission v. A. & S. Ry. Co., 98 I. C. C. 183.

The rates sought closely approximate that scale. In Appendix A will be found comparisons of the existing rates from Group 3 with rates for similar distances under the vegetable-oils scale. Defendants object to the use of the vegetable-oils scale as a measure of the reasonableness of the rates on refined oils to South Dakota on the ground that this scale as applied to South Dakota is a so-called paper scale, there being practically no movement of vegetable oils to that State from the area from which the scale applies. In the Oklahoma Corporation Commission case, it was found proper to apply a uniform scale of rates on vegetable oils over the large area covered by that case, and in the fixation of the scale we necessarily fused the varying traffic and transportation conditions in the different territories to which the scale was applied. We are not convinced that the theory of a uniform scale under which the same relative level of rates would be applied to South Dakota as applied to Iowa, for example, should be extended to petroleum products, and only by the adoption of such a theory would the vegetable-oils scale as applied to South Dakota have much probative worth in determining the reasonableness of the rates on petroleum products.

The present rates on refined oils from Kansas City, Mo., to the more important South Dakota destinations average about 90 per cent of the fifth-class rates, to Omaha, Sioux City, Twin Cities, and Chicago, about 75 per cent, and to selected Nebraska points, 67 per cent. Refined oils are rated fifth class in western classification.

Defendants which serve South Dakota state that the rates on petroleum products in effect at time of hearing from the mid-continent field to the Twin Cities were depressed by competitive influences over which they had no control; that in order to participate in the carriage of the heavy volume of petroleum traffic which moves from the mid-continent field to the Twin Cities and contiguous territory they became parties to the low rates to that section; and that this kept the rates to Sioux City, Sioux Falls, Pipestone, and other intermediate points on a depressed level which should not be spread farther into South Dakota. In our original report herein we reduced the rates to Sioux City, Sioux Falls, and the Twin Cities, the rates from Group 3 of 39.5 cents to Sioux City and
99 43 cents to Sioux Falls and the Twin Cities, becoming 36, 40, and 42 cents, respectively. Increases were authorized to other points. In making these changes we said:

"We find that the rates assailed * * * are as a whole not in excess of reasonable maximum rates, but that such rates are unduly prejudicial or preferential as * * * between the various destination points. We further find that the rates or basis of rates set forth in Appendix 5 hereto, will be for the future, just, reasonable, and nonprejudicial * * *."

The new rates suggested by the examiner in No. 16309 from Group 3 to South Dakota were arrived at by applying to the

distances from Tulsa the ton-mile earnings of approximately 14 mills afforded by the old Tulsa-Sioux City rate of 39.5 cents. Complainants object to the rates suggested by the examiner on the ground that they are too high. They contend that the earnings per ton-mile should decrease as the haul into South Dakota increases. Using average distances from Group 3, as computed by complainants, the rates proposed by the examiner produce average ton-mile earnings of 12.97 mills, whereas the old 39.5-4cent rate from Group 3 to Sioux City produced average ton-mile earnings of 12.95 mills. The new rate of 36 cents to Sioux City affords ton-mile earnings from the group of 11.82 mills.

The movement of refined oils to points in South Dakota on the Chicago & North Western during 1924, amounting to 2,937 cars, of which 2,339 originated in Wyoming, 14 at Whiting, Ind., and the remainder in the mid-continent field. Although the great preponderance of the movement to South Dakota appears to be from Wyoming, rates from the mid-continent field are of particular importance to complainants because of the basis upon which gasoline and other petroleum products are generally sold. That basis is discussed in our prior reports herein.

Complainants in No. 16309 distribute petroleum products in competition with distributors in northwestern Iowa, southwestern Minnesota, and southeastern South Dakota who enjoys very much lower freight rates from the mid-continent field. A large part of the petroleum products shipped into South Dakota is consumed in forming operations.

Although we have held in a number of cases that traffic and transportation conditions in eastern South Dakota are not substantially dissimilar from those in contiguous sections of southwestern Minnesota and northwestern Iowa, taken as a whole traffic and transportation conditions in South Dakota, in common with North Dakota and northern Minnesota, are less favorable than in western trunk-line territory east of the Missouri River and south of the Twin Cities.

Conditions in western South Dakota are less favorable than in
100 eastern South Dakota. It is a well-accepted rule of rate making that ordinarily earnings per ton-mile should decrease as distance increases, but this is not an inflexible rule and the reverse is frequently found in rates from a lower to a higher rated territory.

We are of opinion that rates on petroleum products from the mid-continent field to South Dakota may properly be maintained on a higher relative level than the rates which we have prescribed to Sioux City, but that existing differences are not justified.

There are refineries located at various points in Wyoming, but complainants' evidence is confined to rates from Casper and Osage. These points, which are located in the eastern part of the State, take the same rates to South Dakota. Greybull, in the western part of

the State, is also an important refining point, and to many points in South Dakota takes the same rates as Casper. The following table sets forth present rates and earnings from Casper and Osage to representative points in South Dakota, together with the rates sought by complainants:

To—	Distance[1]	Rate	Ton-mile earnings	Rate sought
	Miles	*Cents*	*Mills*	*Cents*
Rapid City	288	43.5	32.5	37
Belle Fourche	343	50	29.1	39
Murdo	432	51	23.6	40
Pierre	456	53.5	23.4	42
Chamberlain	507	53.5	21.1	42
Redfield	548	53.5	19.5	42
Huron	575	53.5	18.6	44
Mitchell	574	53.5	18.6	44
Watertown	688	53.5	15.5	45
Aberdeen	640	53.5	16.7	45
Winner[2]	693	61	17.6	45
Yankton	719	53.5	14.8	44
Sioux Falls	753	45	12	43
Mobridge	801	59.5	14.8	47
Lemmon	900	70	15.5	55

[1] Computed from Casper. [2] Branch-line point.

Complainants compare rates from Casper and Osage to South Dakota points with rates from the same points to Sioux City, 594 miles, 39.5 cents; to St. Paul, 854 miles, 45 cents; to Chicago, 1,096 miles, 51 cents; and to Omaha, 635 miles, 36 cents. The rate to Omaha is blanketed back to cover most of Nebraska and the rates to the other points indicated apply to large groups of destination points. Defendants state that the somewhat unusual rate situation portrayed by the above comparisons, under which farther distant territory to the east and equidistant territory to the south are given materially lower rates than South Dakota, is engendered by competitive influences not existing to South Dakota. The rates on refined oils from Group 3 to Omaha, Sioux City, and St. Paul, and points grouped therewith, in effect prior to our original report
101 herein, were 33.5, 39.5, and 43 cents, respectively. Defendants state that existing rates from Wyoming to these points were established to enable refineries in Wyoming to compete with refineries shipping from Group 3, but that rates from Group 3 to South Dakota being upon a much higher level there was not the same need for low rates from Wyoming to that State. Rates from Wyoming to points east of South Dakota do not apply over routes through South Dakota, except certain routes embracing lines between Sioux City and Sioux Falls.

Defendants compare rates from Casper to South Dakota with rates which division 2 found not unreasonable on refined oils from Casper to Montana in Texas Co. v. C., B. & Q. R. R. Co., 101 I. C. C. 734. Representative instances drawn from these comparisons are set forth below:

	Distance	Rate
	Miles	*Cents*
Sioux Falls, S. Dak	741	45
Savoy, Mont	740	83
Watertown, S. Dak	672	53.5
Assiniboine, Mont	678	83
Huron, S. Dak	572	53.5
Great Falls, Mont	562	83
Aberdeen, S. Dak	642	53.5
Drummond, Mont	637	89.5
Rapid City, S. Dak	286	43.5
Frombert, Mont	291	61

Rates on refined oils from Casper to the eastern section of South Dakota are approximately 45 per cent and to the western section approximately 65 per cent of the fifth-class rates.

Rates from Wyoming to South Dakota may properly afford higher earnings than rates from Group 3, not only because of the shorter distances but also because practically the entire haul from Wyoming is within a territory much less favorable from a traffic standpoint than the territory east of the Missouri River through which a large part of the transportation from Group 3 takes place.

In Utah State Automobile Asso. v. A., T. & S. F. Ry. Co., 66 I. C. C. 8, and 92 I. C. C. 376, we found rates of 83.5 cents from Greybull, 799 miles, and Casper, 740 miles, to Salt Lake City, Utah, to be unreasonable to the extent that they exceeded respectively 70 and 66 cents. The rates there prescribed afforded ton-mile earnings of 17.52 and 17.83 mills.

The present rates on petroleum and petroleum products from Casper and Osage to eastern and northern South Dakota are not unreasonably high, but rates to intermediate points should be graded upon a somewhat lower basis. Representative of the rates which should be established to intermediate points are 50 cents to Mitchell,
102 Huron, and Redfield, 45 cents to Pierre and Chamberlain, 40 cents to Belle Fourche and 36 cents to Rapid City.

Complainants' evidence with regard to rates from Montana to South Dakota is practically confined to points of destination on the Chicago, Milwaukee & St. Paul, and we shall deal only with rates to such points. The producing points in Montana referred to by the parties are Miles City, Lewistown, and Great Falls. These points are grouped and take the same rates to destinations east of the Missouri River, but to destinations on and west of the river the rates from Miles City are somewhat lower. The situation is portrayed by the following table:

To—	From Miles City			From Lewistown			From Great Falls		
	Distance	Rate	Ton-mile earnings	Distance	Rate	Ton-mile earnings	Distance	Rate	Ton-mile earnings
	Miles	*Cents*	*Mills*	*Miles*	*Cents*	*Mills*	*Miles*	*Cents*	*Mills*
Lemmon	216	50	46.3	495	70	28.3	631	70	22.1
Mobridge	314	60.5	38.5	593	70	23.6	730	70	19.2
Aberdeen	412	70	34	691	70	20.3	828	70	16.9
Milbank	508	70	27.6	787	70	17.8	924	70	15.2
Mitchell	541	70	25.9	820	70	17.1	957	70	14.6
Sioux Falls	594	70	23.6	873	70	16	1,010	70	13.9

Complainants contend that the present groups, both of origin and of destination points, are excessively large and result in unreasonably high rates for the shorter hauls. The movement of petroleum products from Montana to South Dakota is very light, and the rates are as low as those from Montana to North Dakota and generally lower than those applying in Montana.

Considering the volume of movement and the territory in which the transportation takes place, it can not be said that rates from Lewistown and Great Falls to points in eastern South Dakota are unreasonably high, but lower rates should apply from those points to Aberdeen and points west thereof; also rates from Miles City should be lower than rates from Lewistown and Great Falls.

There are refineries located at various points in Illinois and Indiana, the largest being at Wood River, Ill., a point near St. Louis, Mo., and at Whiting, Ind., a point within the Chicago switching district. Complainant's evidence is confined almost wholly to rates from Whiting and only rates from that point will be passed upon. Appendix B sets forth rates and earnings on refined oils from Whiting to representative points in South Dakota. Comparison of the rates on refined oils with rates which we have prescribed on certain other commodities between Chicago and South Dakota and intermediate territory in Minnesota and Iowa discloses that the
103 rates on refined oils bear a fairly consistent relation to the rates on the other commodities at points in Minnesota and Iowa, but that when South Dakota is reached there is a very sharp upward grading of the rates on refined oils, whereas rates on the other commodities grade upward much less precipitously. As illustrative, the rates on cement, wheat,[3] and cattle [3] increase from 19.5, 25, and 37 cents, respectively, at Sioux City, to 27, 34.5, and 45.5 cents at Chamberlain, and 32, 45.5, and 58.5 cents at Rapid City, whereas the rates on refined oils increase from 38 cents at Sioux City to 60.5 cents at Chamberlain and $1.08 at Rapid City.

To eastern South Dakota the refined-oil rates from Whiting average about 90 per cent and to western South Dakota about 80 per cent of the fifth-class rates.

Comparisons offered by defendants show that rates on refined oils from Whiting to points in eastern South Dakota average lower than rates on the same commodities for hauls of equal length from Whiting to Kansas, Nebraska, and Minnesota, and that rates on canned goods, iron and steel, agricultural implements, and sugar from Chicago to eastern South Dakota points afford higher ton-mile earnings than rates on refined oils from and to the same points.

The rates which we prescribed in our original report on refined oils from Group 2 to Sioux City, 434 miles, of 33.5 cents, and to Sioux Falls, 547 miles, of 38 cents, afford ton-mile earnings of 15.44 and 13.89 mills, respectively.

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[3] Rates apply eastbound.

We are of the opinion that the rates on petroleum products from Whiting to South Dakota are as a whole too high as compared with other rates on the same products which we have recently prescribed in this territory, or which we are herein prescribing from other origin territories to South Dakota.

RATES TO NORTH DAKOTA AND MINNESOTA

Rates on refined oils from the mid-continent field to North Dakota and that portion of Minnesota here under consideration are published as joint rates and are made by adding to the commodity rates to the border points of Sioux City or Willmar, Granite Falls, Paynesville, or St. Cloud, Minn., full fifth-class rates beyond and deducting from the amounts so obtained 5.5 cents per 100 pounds. Rates and earnings from Group 3 to representative destinations are shown in Appendix C. Complainants contend that reasonable rates to this territory would afford earnings not in excess of those
104 afforded by the existing rates to the border points. They also contend that the vegetable-oils scale hereinbefore discussed would afford a reasonable basis of rates to apply on refined oils into this territory. Comparisons of present rates with rates which would result from the application of that scale are also set forth in Appendix C.

Rates on refined oils from Tulsa to 11 points in western trunk-line territory situated on or east of the Missouri River, are shown to average 44 per cent of the fifth-class rates, whereas the rate on refined oils from Tulsa to Fargo, N. Dak., is 59.3 per cent of the fifth-class rate. Complainants compare rates on refined oils from Group 3 to North Dakota and Minnesota with rates on refined oils from Wyoming to Sioux City, St. Paul, and Chicago, and points grouped therewith; also with proportional rates from Wyoming to North Dakota and Minnesota points applicable on shipments to Canada. Competitive influences which have affected the rates from Wyoming have already been mentioned in connection with rates from Wyoming to South Dakota.

Comparisons of record show that the rates on refined oils from Group 3 to points in North Dakota and Minnesota bear a higher percentage relation to the rate on refined oils from Group 3 to the Twin Cities than rates on cement from Ada, Okla., to the same destinations bear to the rate on cement from Ada to the Twin Cities. Rates on refined oil from Group 3 to the North Dakota destinations average 195.1 per cent, and to the Minnesota destinations 155.2 per cent of the old rate of 43 cents to the Twin Cities, whereas the rates on cement to the North Dakota destinations average 168.1 per cent and to the Minnesota destinations 138.5 per cent of the rate of 26 cents to the Twin Cities. The basis upon which the rates on cement from Ada appear to have been established was approved in Lehigh Portland Cement Co. v. Director General, 61 I. C. C. 613. That

basis has been changed somewhat by Lehigh Portland Cement Co. v. B. F. & I. F. Ry. Co., 132 I. C. C. 3.

Exhibits of record show that while the ton-mile earnings accruing to certain of the North Dakota lines under the rates on a number of selected commodities do not differ materially from the average of the corresponding earnings of 27 western roads, the ton-mile earnings under the rates of the same North Dakota carriers on refined petroleum oil and its products are materially in excess of the average earnings received by the 27 roads on the same commodities.

Defendants show that rates from Group 3 to North Dakota and Minnesota generally afford lower ton-mile earnings than rates from Whiting, Ind., Wood River, Ill., and Wyoming refining points
105 to the same destinations; that the present rates generally are lower than they would be if constructed by adding to the commodity rates to the border points 75 per cent of the fifth-class rates beyond; and that they produce lower ton-mile earnings than rates on canned goods, iron and steel, and agricultural implements from Chicago to points in the same territory for comparable distances. Defendants also refer to Independent Home Oil Co. v. Director General, 59 I. C. C. 398, in which division 1 made findings with regard to the rates on petroleum prodcts from Oklahoma and Kansas to certain points in North Dakota and Minnesota similar to those made in the Codington case, with regard to rates to points in South Dakota.

One of the arguments most strongly advanced by defendants against any reduction in rates from the mid-continent field to North Dakota and Minnesota is that rates from Wyoming and Montana to these States are made with relation to the rates from Group 3 and that any reduction in the rates from Group 3 will necessitate corresponding reductions from Wyoming and Montana.

In prescribing rates on cement we have treated northwestern Minnesota and the eastern sections of the Dakotas as higher rated territory than Iowa and southern Minnesota. We have also treated the central and western sections of the Dakotas as higher rated territory than the eastern sections of those States. Western Cement Rates, 48 I. C. C. 201 and 69 I. C. C. 644, and Lehigh Portland Cement Co. v. B. F. & I. F. Ry. Co., supra. As illustrative, in the latter case the scale prescribed for application from Mason City, Iowa, to eastern North Dakota and northwestern Minnesota for the distances there involved, is approximately 15 per cent higher than the scale we prescribed in the Western Cement case for application from Mason City, among other points, to St. Paul, Willmar, Sioux Falls, and Sioux City, and the scale prescribed for application from Mason City to central and western North Dakota is approximately 20 per cent higher than that prescribed for application from Mason City to eastern North Dakota and northwestern Minnesota. Our order in the Lehigh case was confined to rates from Mason City, but we expressed the view that rates to northwestern Minnesota and North

Dakota from related producing points, which would include Kansas City and points in Kansas and northern Oklahoma, should be established on substantially the same basis.

In opposing reductions in the rates on petroleum and petroleum products from and to the various territories here under consideration, defendants call attention to the unsatisfactory earnings of certain of the interested lines. The Chicago, Milwaukee &
106 St. Paul and Chicago & North Western, whose lines constitute the greater part of the railroad mileage of South Dakota, are especially mentioned in this connection. We are fully mindful of the revenue needs of these various carriers, but, as we have frequently said, lack of adequate revenue from operations as a whole affords no justification for unlawful rates on individual commodities.

FINDINGS

We find:

1. That the rates on gasoline and other petroleum products taking the same rates from Group 3, as that group is defined in our original report herein, to points in South Dakota, North Dakota, and that part of Minnesota covered by these proceedings, are and for the future will be unreasonable and unduly prejudicial to the extent that they exceed the respective rates set forth in Appendixes A and C under the heading "Rate prescribed."

2. That rates on gasoline and other petroleum products taking the same rates from Casper and Osage, Wyo., to points in central and western South Dakota are and for the future will be unreasonable and unduly prejudicial to the extent that they exceed 50 cents to Redfield, Huron, and Mitchell, 45 cents to Pierre and Chamberlain, 36 cents to Rapid City, and 40 cents to Belle Fourche.

3. That rates on gasoline and other petroleum products taking the same rates from Montana to points on the Chicago, Milwaukee & St. Paul in South Dakota are and for the future will be unreasonable to the extent that they exceed (*a*) from Lewistown and Great Falls, 55 cents to Lemmon, 60 cents to Mobridge, and 65 cents to Aberdeen and (*b*) from Miles City 35 cent to Lemmon, 40 cents to Mobridge, 45 cents to Aberdeen, and 50 cents to points east of Aberdeen.

4. That rates on gasoline and other petroleum products taking the same rates from Whiting, Ind., to South Dakota points are and for the future will be unreasonable and unduly prejudicial to the extent that they exceed the rates set forth in Appendix B under the heading "Rate prescribed."

5. That rates on gasoline and other petroleum products taking the same rates from points in the other origin groups in the mid-continent field, as those groups were defined in our original report herein, to South Dakota, North Dakota, and northwestern Minnesota are and for the future will be unreasonable and unduly prejudicial to the extent that the differences between the rates from points

in such groups and rates herein prescribed from Group 3 depart from the differentials prescribed to Sioux Falls and St. Paul in our original report herein, and set forth in Appendix 5 to that report.

107 6. That rates on fuel oil and other low-grade petroleum products from and to the various points covered by our findings are and for the future will be unreasonable to the extent that they exceed 80 per cent of the rates herein prescribed on gasoline.

The rates and bases of rates found reasonable herein are to representative destinations. Defendants should adjust rates to other destinations, including destinations in northern Nebraska, in proper relationship thereto, having due regard for differences in distances.

Complainants in No. 17304 ask for reparation on shipments to North Dakota and Minnesota. Complainants in No. 16309 do not ask for reparation, but there are other complaints pending in which reparation is sought on shipments from the mid-continent field to South Dakota. The reductions which the carriers were directed to make to Sioux City, Sioux Falls, and the Twin Cities in our original report herein had for their purpose the creation of a more consistent and reasonable relationship of rates as between those points and other points in western trunk-line territory to which in some instances increases were authorized. The reductions which we are here requiring are of the same nature and are a part of the same general readjustment. Upon consideration of the particular circumstances here existing, and following our usual practice in cases of this kind, reparation is denied.

APPENDIX A

Comparison of rates on refined oils from Group 3

From Group 3 to—	Distance	Present rate	Ton-mile earnings	Vegetable-oils scale	Rate prescribed	Ton-mile earnings
	Miles	*Cents*	*Mills*	*Cents*	*Cents*	*Mills*
Sioux City	610	36	11.80	44.5		
Sioux Falls	701	40	11.41	47.5		
Yankton	672	53.5	15.92	46	41	12.20
Mitchell	747	58.5	15.66	47.5	45	12.06
Huron	797	61	15.31	49	48	12.05
Winner [1]	867	69	17.10	50	54	13.37
Chamberlain	814	66	16.22	50	52	12.77
Watertown	828	58.5	14.13	50	50	12.08
Aberdeen	875	67.5	15.43	51	55	12.58
Murdo	889	95	21.37	51	58	13.05
Pierre	916	70.5	15.39	52	59	12.89
Roscoe	917	67.5	14.72	52	59	12.87
Midland	967	92	19.03	53	63	13.03
Mobridge	974	73.5	15.09	53	63	12.93
Rapid City	1,033	111.5	21.59	54	68	13.17
Isabel [1]	1,036	90.5	17.47	54	70	13.51
Deadwood	1,064	91	17.11	55	70	13.16
Lemmon	1,073	90.5	16.87	55	70	13.05
Belle Fourche	1,087	93	17.11	55	72	13.25
Faith [1]	1,106	99	17.90	56	73	13.20

[1] Branch-line points.

APPENDIX B

Comparison of rates on refined oils from Whiting, Ind.

From Whiting, Ind., to—	Distance	Rate	Ton-mile earnings	Rate prescribed	Ton-mile earnings
	Miles	*Cents*	*Mills*	*Cents*	*Mills*
Stations on C., M. & St. P.:					
Sioux City, Iowa	570	38.5	13.51		
Elk Point, S. Dak	591	39.5	13.37	39	13.20
Yankton, S. Dak	631	43	13.63	40	12.67
Sioux Falls, S. Dak	662	39.5	11.93	40	12.08
Mitchell, S. Dak	699	48	13.73	44	12.59
Chamberlain, S. Dak	766	60.5	15.80	50	13.05
Roscoe, S. Dak	800			52	13.00
Mobridge, S. Dak	856	67.5	15.77	57	13.32
Presho, S. Dak	806	72.5	17.99	55	13.64
Kadoka, S. Dak	887	95.5	21.53	60	13.52
Rapid City, S. Dak	985	108	21.93	65	13.20
Lemmon, S. Dak	955	88	18.43	64	13.40
Stations on C. & N. W.:					
Elkton, S. Dak	557	42	15.08	39	14.00
Lake Preston, S. Dak	604	48	15.89	40	13.24
Watertown, S. Dak	609	48	15.76	40	13.13
Huron, S. Dak	646	50.5	15.63	44	13.62
Pierre, S. Dak	765	66	17.25	50	13.07
Aberdeen, S. Dak	715	50.5	14.13	47	13.15
Midland, S. Dak	816	105.5	25.86	56	13.72
Rapid City, S. Dak	933	108	23.15	65	13.93
Belle Fourche, S. Dak	987	108	21.88	68	13.78

APPENDIX C

Rates and earnings from Group 3 to representative destinations

From Group 3 to—	Distance[1]	Present rate	Ton-mile earnings	Vegetable-oils scale	Rate prescribed	Ton-mile earnings
	Miles	*Cents*	*Mills*	*Cents*	*Cents*	*Mills*
St. Paul, Minn	822	42	10.20	50		
Willmar, Minn	831	42	10.11	50		
Morris, Minn	886	58	13.09	51	54	12.19
Fergus Falls, Minn	981	64	13.05	53	61	12.44
Wheaton, Minn	971	56.5	11.63	53		
Wadena, Minn	972	62.5	12.86	53	62.5	12.86
Bemidji, Minn	1,046	70.5	12.98	54	67	12.81
Grand Rapids, Minn	1,113	64	11.50	56	70	12.58
Wahpeton, N. Dak	944	65	13.77	52	60	12.71
Fargo, N. Dak	990	70	14.14	53	62	12.53
Grand Forks, N. Dak	1,068	75.5	14.14	55	70	13.11
Devils Lake, N. Dak	1,125	83.5	14.84	56	74	13.16
New England, N. Dak.[2]	1,133	102.5	18.09	56	80	14.12
Wallhalla, N. Dak.[2]	1,153	86	14.91	57	80	13.87
Jamestown, N. Dak	1,157	81	14.00	57	76	13.14
Rugby, N. Dak	1,162	89.5	15.14	57	77	13.03
Minot, N. Dak	1,215	92	15.14	58	81	13.33
Bismarck, N. Dak	1,260	94.5	15.00	59	82	13.02
Antler, N. Dak.[2]	1,262	99	15.69	59	88	13.94
Williston, N. Dak	1,336	111	16.62	60	88	13.17
Dickinson, N. Dak	1,364	107	15.69	61	88	12.90

[1] Arrived at by adding 60 miles to mileages from Tulsa.
[2] Branch-line point.

109 ORDER

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 5th day of March, A. D. 1928

No. 15584

Sinclair Refining Company and the Kansas City Refining Company

v.

Ahnapee and Western Railway Company; The Algoma Central and Hudson Bay Railway Company; The Atchison, Topeka and Santa Fe Railway Company; Atlantic Northern Railway Company; Aurora, Elgin and Fox River Electric Company; The Baltimore and Ohio Railroad Company; the Baltimore and Ohio Chicago Terminal Railroad Company; The Belt Railway Company of Chicago; Canadian National Railways; Canadian Pacific Railway Company; Cassville & Exeter Railway Company; Cazenovia Southern Railroad Company; Cedar Rapids and Iowa City Railway; Central Wisconsin Railway Company; Charles City Western Railway Company; The Chatham, Wallaceburg and Lake Erie Railway Company; The Chicago and Alton Railroad Company and William W. Wheelock and William G. Bierd, Receivers; Chicago and Erie Railroad Company; Chicago and Eastern Illinois Railway Company; Chicago & Illinois Midland Railway Company; Chicago & Illinois Western Railroad; Chicago and North Western Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago Great Western Railroad Company; Chicago, Harvard and Geneva Lake Railway Company; Chicago, Indianapolis and Louisville Railway Company; Chicago, Milwaukee and Gary Railway Company; Chicago, Milwaukee and St. Paul Railway Company; Chicago, Peoria and St. Louis Railroad Company and Bluford Wilson and William Cotter, Receivers; The Chicago, Rock Island and Gulf Railway Company; The Chicago, Rock Island and Pacific Railway Company; Chicago, St. Paul, Minneapolis and Omaha Railway Company; Chicago, West Pullman & Southern Railroad Company; The Cincinnati, Indianapolis & Western Railroad Company; The Cleveland, Cincinnati, Chicago and St. Louis Railway Company; Clinton, Davenport & Muscatine Railway Company; Copper Range Railroad Company; Duluth, Missabe and Northern Railway Company; The Duluth, South Shore and Atlantic Railway Company; Duluth, Winnepeg and Pacific Railway Company; East St. Louis Connecting Railway Company; Electric Short Line Railway Company and E. D. Luce and W. J. Hield, Receivers; Elgin, Joliet and Eastern Railway Company; Escanaba & Lake Superior Railroad Company; Fort Dodge, Des Moines & Southern Railroad Company; Fort Smith and Western Railway Company;

Cincinnati, Saginaw and Mackinaw Railroad Company (Canadian National Railway Company, Lessee); The Chicago, Detroit and Canada Grand Trunk Junction Railroad Company (Canadian National Railway Company, Lessee); Detroit Grand Haven and Milwaukee Railway Company; Grand Trunk Western Railway Company; Grand Trunk-Milwaukee Car Ferry Company; The Michigan Air Line Railway; Toledo, Saginaw and Muskegon Railway Company; Canadian National Railway Company; The Champlain and St. Lawrence Railroad Company (Canadian National Railway Company, Lessee); The United States and Canada Rail Road Company (Canadian National Railway Company, Lessee); Great Northern Railway Company; Green Bay and Western Railroad Company; Gulf, Colorado and Santa Fe Railway Company; Hanover Railway Company; Houston & Texas Central Railroad Company; Illinois Central Railroad Company; Illinois Terminal Company; Illinois Traction, Incorporated; St. Louis Electric Terminal Railway Company; Indiana Harbor Belt Railroad Company; Interstate Car Transfer Company; Des Moines & Central Iowa Railroad; Iowa & Omaha Short Line Railway Company; Iowa & Southwestern Railroad Company; Iowa Southern Utilities Company; The Kansas and Sidell Railroad Company; Kansas City, Clinton and Springfield Railway Company; The Kansas City Southern Railway Company; Kansas, Oklahoma & Gulf Railway Company; Kewaunee, Green Bay and Western Railroad Company; La Crosse and Southeastern Railway Company; The La Salle and Bureau County Railroad Company; The Leavenworth & Topeka Railroad Company; Litchfield and Madison Railway Company; Louisville and Nashville Railroad Company; Manchester & Oneida Railway Company; Manufacturers' Railway Company; Marinette, Tomahawk & Western Railroad Company; Mason City and Clear Lake Railroad Company; The Michigan Central Railroad Company; Midland Continental Railroad; The Midland Railway Company of Manitoba; Midland Valley Railroad Company; Mineral Point and Northern Railway Company; Mineral Range Railroad; Minnesota and International Railway Company; The Minneapolis & St. Louis Railroad Company and W. H. Bremner, Receiver; Minneapolis, Anoka and Cuyuna Range Railway Company; Minneapolis, Northfield and Southern Railway; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Missouri and North Arkansas Railway Company; Missouri-Kansas-Texas Railroad Company; Missouri-Kansas-Texas Railroad Company of Texas; Missouri Pacific Railroad Company; Munising, Marquette & Southeastern Railway Company; Muscatine, Burlington & Southern Railroad Company and Arthur Hoffman, Receiver; The New York Central Railroad Company; The New York, Chicago and St. Louis Railroad Company; Northern Pacific Railway Company; Oil Fields Short Line Railroad Company; Oklahoma, New Mexico & Pacific Railway

Company; Oklahoma-Southwestern Railway Company; Okmulgee Northern Railway Company; The Pennsylvania Railroad Company; Peoria and Pekin Union Railway Company; Peoria Railway Terminal Company and W. G. Bierd and H. I. Battles, Receivers; Pere Marquette Railway Company; Quincy, Omaha & Kansas City Railroad Company; Rock Island Southern Railway Company; St. Louis and Hannibal Railroad Company; St. Louis Merchants Bridge Terminal Railway Company; St. Louis-San Francisco Railway Company; St. Louis, San Francisco and Texas Railway Company; St. Louis Transfer Railway Company; Sand Springs Railway Company; Southern Railway Company; Stanley, Merrill and Phillips Railway Company; The Tabor & Northern Railway Company; Tama and Toledo Railroad Company; Terminal Railroad Association of St. Louis; The Texas and Pacific Railway Company and J. L. Lancaster and Chas. L. Wallace, Receivers; Toledo, Peoria & Western Railway Company and S. M. Russell, Receiver; The Union Traction Company (Kansas);
Wabash Railway Company; Waterloo, Cedar Falls and
111 Northern Railway Company; The Wichita Northwestern
Railway Company and O. P. Byers and J. E. Conklin, Receivers; The Wiggins Ferry Company; Wisconsin & Michigan Railroad Company; and The Yazoo and Mississippi Valley Railroad Company.

No. 15585

Miller Petroleum Company; White Eagle Oil & Refining Company; Skelly Oil Company; The Kanotex Refining Company; The Vickers Petroleum Company; The Derby Oil Company; The Peerless Oil & Refining Company; and Eldorado Refining Company

v.

Ahnapee and Western Railway Company; The Algoma Central and Hudson Bay Railway Company; Alton and Southern Railroad; The Arkansas Valley Interurban Railway Company; The Atchison, Topeka and Santa Fe Railway Company; Atlantic Northern Railway Company; Chicago, Attica & Southern Railroad Company; The Baltimore and Ohio Railroad Company; The Baltimore and Ohio Chicago Terminal Railroad Company; The Belt Railway Company of Chicago; Cassville & Exeter Railway Company; Cazenovia Southern Railroad Company; Central Wisconsin Railway Company; Charles City Western Railway Company; The Chicago and Alton Railroad Company and W. W. Wheelock and W. G. Bierd, Receivers; Chicago and Erie Railroad Company; Chicago and Eastern Illinois Railway Company; Chicago & Illinois Midland Railway Company; Chicago & Illinois Western Railroad; Chicago and Western Indiana Railroad Company; Chicago and North Western Railway Company; Chicago, Aurora and Elgin Railroad Company; Chicago, Burlington & Quincy Railroad Company; Chicago Great Western Railroad Company; Chi-

cago, Indianapolis and Louisville Railway Company; Chicago, Milwaukee and Gary Railway Company; Chicago, Milwaukee and St. Paul Railway Company; Chicago, Peoria and St. Louis Railroad Company and Bluford Wilson and William Cotter, Receivers; The Chicago, Rock Island and Pacific Railway Company; Chicago, St. Paul, Minneapolis and Omaha Railway Company; Chicago, West Pullman & Southern Railroad Company; The Cincinnati, Indianapolis & Western Railroad Company; The Cleveland, Cincinnati, Chicago and St. Louis Railway Company; Copper Range Railroad Company; Des Moines & Central Iowa Railroad; The Duluth and Iron Range Rail Road Company; Duluth & Northeastern Railroad Company; Duluth, Missabe and Northern Railway Company; The Duluth, South Shore and Atlantic Railway Company; Duluth, Winnipeg and Pacific Railway Company; East St. Louis Connecting Railway Company; Elgin, Joliet and Eastern Railway Company; Escanaba & Lake Superior Railroad Company; Fort Dodge, Des Moines & Southern Railroad Company; Farmers Grain and Shipping Company; Galesburg & Great Eastern Railroad Company; Great Northern Railway Company; Green Bay & Western Railroad Company; Hanover Railway Company; Illinois Central Railroad Company; Illinois Terminal Company; Illinois Traction, Incorporated; Iowa Railway & Light Company; Indiana Harbor Belt Railroad Company; Iowa Southern Utilities Company; The Kansas and Sidell Railroad Company; Kansas City, Clinton and Springfield Railway Company; The Kansas City Southern Railway Company; The Kansas City, Mexico & Orient Railroad Company and W. T. Kemper, Receiver; Kewaunee, Green Bay and Western Railroad Company; The Leavenworth & Topeka Railroad Company; Litchfield
112 and Madison Railway Company; Louisville and Nashville Railroad Company; Manchester & Oneida Railway Company; Manufacturers' Railway Company; Marinette, Tomahawk & Western Railroad Company; Mason City and Clear Lake Railroad Company; The Michigan Central Railroad Company; Midland Continental Railroad; Midland Valley Railroad Company; Mineral Point and Northern Railway Company; Mineral Range Railroad Company; Minnesota and International Railway Company; Minnesota, Dakota & Western Railway Company; The Minneapolis & St. Louis Railroad Company and W. H. Bremner, Receiver; Minneapolis, Anoka and Cuyuna Range Railway Company; Minneapolis, Northfield and Southern Railway; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Missouri and North Arkansas Railway Company; Missouri-Illinois Railroad Company; Missouri-Kansas-Texas Railroad Company; Kansas, Oklahoma & Gulf Railway Company; Missouri Pacific Railroad Company; Missouri Pacific Railroad Corporation in Nebraska; Muscatine, Burlington & Southern Railroad Company and Arthur Hoffman, Receiver; The New York Central Railroad Company; The New York, Chicago and St. Louis Railroad Company; North-

ern Pacific Railway Company; Peoria Railway Terminal Company and W. G. Bierd and H. I. Battles, Receivers; Peoria and Pekin Union Railway Company; The Pennsylvania Railroad Company; Pere Marquette Railway Company; Quincy, Omaha & Kansas City Railroad Company; Rock Island Southern Railway Company; St. Louis and Hannibal Railroad Company; St. Louis Merchants Bridge Terminal Railway Company; The St. Joseph and Grand Island Railway Company; St. Louis-San Francisco Railway Company; The St. Louis, Troy and Eastern Railroad Company; Southern Railway Company; The Tabor & Northern Railway Company; Terminal Railroad Association of St. Louis; Toledo, Peoria & Western Railway Company and Samuel M. Russell, Receiver; Union Pacific Railroad Company; Wabash Railway Company; The Wabash, Chester and Western Railroad Company; Waterloo, Cedar Falls and Northern Railway Company; The Wiggins Ferry Company; Wisconsin & Michigan Railroad Company; The Westfield Railroad Company; and St. Louis Electric Terminal Railway Company

No. 16065

Barnsdall Refining Company; Cosden & Company; Empire Refineries, Incorporated; Maryland Refining Company; Producers & Refiners Corporation; Shaffer Oil & Refining Company; Tidal Refining Company; and Transcontinental Oil Company

v.

Louisiana & Arkansas Railway Company; Louisiana Railway & Navigation Company; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; Abilene and Southern Railway Company; Ahnapee & Western Railway Company; Alexandria & Western Railway Company; Alton and Southern Railroad; Angelina & Neches River Railroad Company; Aransas Harbor Terminal Railway; Arkansas Railroad; Arkansas & Louisiana Missouri Railway Company; The Arkansas Western Railway Company; Asherton and Gulf Railway Company; Ashley, Drew & Northern Railway Company; The Atchison, Topeka and Santa Fe Railway Company; Atlantic Northern Railway Company; The Algoma Central and Hudson Bay Railway Company; The Arkansas Valley Interurban Railway Company;
113 Aurora, Elgin & Fox River Electric Company; The Baltimore and Ohio Railroad Company; Bartlett-Western Railway; Bauxite & Northern Railway Company; The Beaumont, Sour Lake & Western Railway Company; Beaver, Meade and Englewood Railroad Company; Bevier & Southern Railroad Company; Big Fork and International Falls Railway Company; Blaney & Southern Railway Company; Blytheville, Leachville & Arkansas Southern Railroad Company; The Brownwood North and South Railway Company; Bryan, Brazos & Burleson Railway Company; Brimstone Railroad & Canal Company; Butler County Railroad

Company; The Baltimore and Ohio Chicago Terminal Railroad Company; The Belt Railway Company of Chicago; Cache Valley Railroad Company; Caddo & Choctaw Railroad Company; Cairo, Truman & Southern Railroad Company; Cape Girardeau Northern Railway Company and Clarence L. Grant, Receiver; Caro Northern Railway Company and W. M. Ross, Receiver; Cassville & Exeter Railway Company; Cazenovia Southern Railroad Company; Cedar Rapids and Iowa City Railway; Central Railway Company of Arkansas; Central Wisconsin Railway Company; Charles City Western Railway Company; The Chicago and Alton Railroad Company and Wm. W. Wheelock and Wm. G. Bierd, Receivers; Chicago and Eastern Illinois Railway Company; Chicago & Illinois Midland Railway Company; Chicago & Illinois Western Railroad; Chicago and North Western Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago, Harvard and Geneva Lake Railway Company; Chicago Great Western Railroad Company; Chicago, Milwaukee and St. Paul Railway Company; Chicago, North Shore and Milwaukee Railroad Company; Chicago, Peoria and St. Louis Railroad Company and Bluford Wilson and Wm. Cotter, Receivers; The Chicago, Rock Island and Gulf Railway Company; The Chicago, Rock Island and Pacific Railway Company; Chicago, St. Paul, Minneapolis and Omaha Railway Company; Chicago, West Pullman & Southern Railroad Company; Christie & Eastern Railway Company; The Cincinnati, Indianapolis & Western Railroad Company; Cisco & Northeastern Railway Company; The Cleveland, Cincinnati, Chicago & St. Louis Railway Company; The Clinton and Oklahoma Western Railroad Company; Clinton, Davenport & Muscatine Railway Company; Colfax Northern Railway Company; The Colorado and Southeastern Railroad Company; The Colorado and Southern Railway Company; The Colorado & Wyoming Railway Company; The Colorado-Kansas Railway Company; Combs, Cass and Eastern Railroad Company; Copper Range tional Railway Company; Canadian Pacific Railway Company; Chicago and Erie Railroad Company; Chicago and Western Indiana Railroad Company; Chicago, Attica & Southern Railroad Company; Chicago, Aurora and Elgin Railroad Company; Chicago, Indianapolis and Louisville Railway Company; Chicago, Milwaukee and Gary Railway Company; The Chicago, Detroit and Canada Grand Trunk Junction Railroad Company (Canadian National Railway Company, Lessee); Cincinnati, Saginaw and Mackinaw Railroad Company (Canadian National Railway Company, Lessee); The Champlain and St. Lawrence Railroad Company (Canadian National Railway Company, Lessee); Dardanelle & Russellville Railroad Company; Davenport, Rock Island and North Western Railway Company; Dayton-Goose Creek Railway Company; Deering Southwestern Railway; The Denison and Pacific Suburban Railway Company; De Queen and Eastern Railroad Company; Des Moines & Central Iowa Railroad; Detroit,

Grand Haven and Milwaukee Railway Company; Doniphan, Kensett & Searcy Railroad Company; The Duluth and Iron Range Rail Road Company; Duluth & Northeastern Railroad
114 Company; Duluth, Missabe and Northern Railway Company; The Duluth, South Shore and Atlantic Railway Company; Duluth, Winnipeg and Pacific Railway Company; Eastland, Wichita Falls & Gulf Railroad Company; East St. Louis, Columbia and Waterloo Railway; East Texas & Gulf Railway Company; East St. Louis Connecting Railway Company; El Dorado and Wesson Railway Company; Elgin, Joilet and Eastern Railway Company; El Paso & Rock Island Railway Company; El Paso & Southwestern Railroad Company; Escanaba & Lake Superior Railroad Company; The Ettrick & Northern Railroad Company and H. R. Madsen, Receiver; Farmers' Grain and Shipping Company; Fordyce and Princeton Railroad Company; Fort Dodge, Des Moines & Southern Railroad Company; Fort Smith and Western Railway Company; Fort Smith, Subiaco & Rock Island Railroad Company; Fort Worth and Denver City Railway Company; Fort Worth & Rio Grande Railway Company; Fourche River Valley & Indian Territory Railway Company; The Franklin and Abbeville Railway Company; Fredericksburg & Northern Railway Company; Freeo Valley Railroad Company; Galesburg & Great Eastern Railroad Company; Hooppole, Yorktown and Tampico Railroad Company; The Galveston, Harrisburg and San Antonio Railway Company; Galveston, Houston & Henderson Railroad Company; The Garden City Western Railway Company; Garyville Northern Railroad Company; Gideon and North Island Railroad Company; The Gilmore and Pittsburgh Railroad Company, Limited; Glenmora & Western Railway Company; Grand Trunk Western Railway Company; Grand Trunk-Milwaukee Car Ferry Company; Great Northern Railway Company; The Great Western Railway Company; Green Bay and Western Railroad Company; Groveton, Lufkin & Northern Railway Company; Gulf & Northern Railway Company; The Gulf & Sabine River Railroad Company; Gulf, Colorado and Santa Fe Railway Company; Gulf, Texas & Western Railway Company and W. Frank Knox, Receiver; Hannibal Connecting Railroad Company; Hanover Railway Company; The Helena, Parkin & Northern Railway Company and H. M. Gregory, Receiver; Hillsboro and Northeastern Railway Company; Hill City Railway Company; Houston and Brazos Valley Railway Company; Houston and Shreveport Railroad Company; Houston & Texas Central Railroad Company; The Houston East and West Texas Railway Company; Iberia and Vermilion Railroad Company; Illinois Central Railroad Company; International-Great Northern Railroad Company; Iowa Southern Utilities Company; Illinois Terminal Company; Illinois Traction, Incorporated; Indiana Harbor Belt Railroad Company; Interstate Car Transfer Company; Iowa Railway & Light Company; Iowa & Omaha Short Line Railway Company; Jefferson &

Northwestern Railway Company; Jonesboro, Lake City and Eastern Railroad Company; The Kansas & Oklahoma Railway Company and H. A. Duvall, Receiver; Kansas City, Clinton and Springfield Railway Company; The Kansas City, Mexico & Orient Railroad Company and Wm. T. Kemper, Receiver; Kansas City, Mexico and Orient Railway Company of Texas; Kansas City Northwestern Railroad and Jay M. Lee, Receiver; The Kansas City Southern Railway Company; Kansas, Oklahoma & Gulf Railway Company and H. W. Gibson and H. L. Traber, Receivers; Kansas, Oklahoma & Gulf Railway Company of Texas; The Kansas and Sidell Railroad Company; Kewaunee, Green Bay and Western Railroad Company; Kinder & Northwestern Railroad Company; La Crosse and Southeastern Railway Company; Lake Charles & Northern Railroad Company; The Lake Providence, Texarkana and Western Railroad; Lake Superior & Ishpeming Railroad Company; Laona & Northern Railway Company;
The La Salle and Bureau County Railroad Company; The
115 Leavenworth & Topeka Railroad Company; Leesville, Slagle and Eastern Railway Company; Litchfield and Madison Railway Company; Loranger, Louisiana & Northeastern Railroad Company and A. Loranger, Receiver; The Louisiana and North West Railroad Company; Louisiana and Pacific Railway Company; Louisiana & Pine Bluff Railway Company; Louisiana Southern Railway Company; Louisiana Western Railroad Company; Louisville and Nashville Railroad Company; Louisville, Henderson & St. Louis Railway Company; Lufkin, Hemphill and Gulf Railway Company; Manchester & Oneida Railway Company; Manila and Southwestern Railway Company; The Mansfield Railway & Transportation Company; Marinette, Tomahawk & Western Railroad Company; Mason City and Clear Lake Railroad Company; Mason & Fort Dodge Railroad Company; Miami Mineral Belt Railroad Company; The Michigan Central Railroad Company; The Midland and Northwestern Railway Company and N. G. Pearsall, Receiver; Midland Continental Railroad; The Midland Terminal Railway Company; Graysonia, Nashville & Ashdown Railroad Company; Midland Valley Railroad Company; Mineral Point and Northern Railway Company; Mineral Range Railroad Company; Minneapolis & Rainy River Railway Company; The Minneapolis & St. Louis Railroad Company and W. H. Bremner, Receiver; Minneapolis, Northfield and Southern Railway; Minneapolis, Red Lake and Manitoba Railway Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Minnesota and International Railway Company; Minnesota, Dakota & Western Railway Company; Mississippi River and Bonne Terre Railway; Missouri and Illinois Bridge and Belt Railroad Company; Missouri-Illinois Railroad Company; Missouri and North Arkansas Railway Company; Missouri-Kansas-Texas Railroad Company; Missouri-Kansas-Texas Railroad Company of

Texas; Missouri Pacific Railroad Company; Missouri Southern Railroad Company; Mobile and Ohio Railroad Company; Monroe & Texas Railroad Company; Morgan's Louisiana and Texas Railroad and Steamship Company; Moscow, Camden & San Augustine Railway Company; Motely County Railway Company; Muscatine, Burlington & Southern Railroad Company and Arthur Hoffman, Receiver; Manufacturers' Railway Company (St. Louis); The Michigan Air Line Railway; The Midland Railway Company of Manitoba; Minneapolis, Anoka and Cuyuna Range Railway Company; Minnesota Western Railroad Company; Missouri Pacific Railroad Corporation in Nebraska; The Nacogdoches & Southeastern Railroad Company; Natchez, Columbia & Mobile Railroad Company; Natchez, Urania & Ruston Railway Company; Neame, Carson & Southern Railroad Company; New Iberia & Northern Railroad Company; New Orleans, Natalbany and Natchez Railway Company; New Orleans, Texas & Mexico Railway Company; The New York Central Railroad Company; Northern Pacific Railway Company; North Louisiana & Gulf Railroad Company; The New York, Chicago and St. Louis Railroad Company; Oakdale & Gulf Railway Company; Oil Fields Short Line Railroad Company; Oklahoma City Junction Railway Company; Oklahoma, New Mexico & Pacific Railway Company; Oklahoma Southwestern Railway Company; Okmulgee Northern Railway Company; Ontonagon Railroad Company; The Orange & Northwestern Railroad Company; The Ouachita and North Western Railroad Company; Panhandle and Santa Fe Railway Company; Panuco Mountain & Monclova Railroad; Paris and Great Northern Railroad Company; Paris and Mount Pleasant Railroad Company and R. W. Wortham, Receiver; The Pecos Valley Southern Railway Company; The Pennsylvania Railroad Company; Peoria and Pekin Union Railway Company; Pine Bluff and North-
116 ern Railway Company and J. H. Riffel, Receiver; Port Bolivar Iron Ore Railway Company; Peoria Railway Terminal Company and W. G. Bierd and H. I. Battles, Receivers; Pere Marquette Railway Company; Quanah, Acme & Pacific Railway Company; Quincy, Omaha & Kansas City Railroad Company; Rapid City, Black Hills & Western Railroad Company; Red River and Gulf Railroad; Rio Grande Railway Company; Rio Grande and Eagle Pass Railway Company; The Rio Grande Junction Railway Company; The Rio Grande Southern Railroad Company; Roby & Northern Railroad Company; Rock Island Southern Railway Company; Rock Port, Langdon & Northern Railway Company; Roscoe, Snyder and Pacific Railway Company; The St. Joseph and Grand Island Railway Company; St. Louis and Hannibal Railroad Company; The St. Louis, Brownsville and 117
Mexico Railway Company; The St. Louis, El Reno and Western Railway Company and L. T. Tune, Receiver; St. Louis, Kennett & Southeastern Railroad Company; St. Louis-San Francisco Railway Company; St. Louis, San Francisco and Texas Railway

Company; The St. Louis, Troy and Eastern Railroad Company; St. Louis Electric Terminal Railway Company; St. Louis Merchants Bridge Terminal Railway Company; St. Louis Transfer Railway Company; Salem, Winona and Southern Railroad Company; The Salina Northern Railroad Company and Henry C. Brent and P. W. Goebel, Receivers; The San Antonio and Aransas Pass Railway Company; San Antonio Southern Railway Company; San Antonio, Uvalde & Gulf Railroad Company and A. R. Ponder, Receiver; San Benito and Rio Grande Valley Railway Company; Sand Springs Railway Company; Shelby County Railway Company; Shelby Northwestern Railway Company; Shreveport, Houston & Gulf Railroad Company; The Sibley, Lake Bisteneau & Southern Railway Company; The Sligo & Eastern Railroad Company; Southern Pacific Company; Southern Railway Company; Stanley, Merrill and Phillips Railway Company; Sugar Land Railway Company; The Tabor & Northern Railway Company; Tama and Toledo Railroad Company; Terminal Railroad Association of St. Louis; Texarkana and Fort Smith Railway Company; The Texas and Pacific Railway Company; Texas and New Orleans Railway Company; Texas City Terminal Railway Company; The Texas Mexican Railway Company; Texas Midland Railroad; Texas, Oklahoma & Eastern Railroad Company; Texas Short Line Railway Company; Texas South-Eastern Railroad Company; Thornton and Alexandria Railway Company; The Timpson & Henderson Railway Company; Tioga & South Eastern Railway Company; Toledo, Peoria & Western Railway Company and Samuel M. Russell, Receiver; Toledo, Saginaw and Muskegon Railway Company; Trans-Mississippi Terminal Railroad Company; Tremont & Gulf Railway Company; The Trinity and Brazos Valley Railway Company and J. A. Hulen, Receiver; Trinity Valley & Northern Railway Company; Trinity Valley Southern Railroad Company; Union Pacific Railroad Company; The Union Traction Company (Kansas); The United States and Canada Rail Road Company (Canadian National Railway Company, Lessee); Uvalde & Northern Railway Company; Vicksburg, Shreveport & Pacific Railway Company; Wabash Railway Company; The Wabash, Chester and Western Rail Road Company and J. Fred Gilster, Receiver; Warren & Ouachita Valley Railway Company; Warren & Saline River Railroad Company; Waterloo, Cedar Falls and Northern Railway Company; The Weatherford, Mineral Wells and Northwestern Railway Company; Westmoreland Interurban Railway Company; Wichita Falls and Southern Railroad Company; Wichita Falls, Ranger & Fort Worth Railroad Company and J. W. Mitchell, Re-
117 ceiver; The Wichita Northwestern Railway Company and O. P. Byers, Receiver; The Wichita Valley Railway Company; Wisconsin & Michigan Railroad Company; The Wiggins Ferry Company; The Westfield Railroad Company; The Wood-

worth & Louisiana Central Railway Company; and The Yazoo and Mississippi Valley Railroad Company

No. 16066

North Texas Petroleum Traffic Bureau

v.

Louisiana Railway & Navigation Company; Louisiana & Arkansas Railway Company; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; Abilene and Southern Railway Company; Ahnapee and Western Railway Company; The Alabama and Vicksburg Railway Company; Alexandria & Western Railway Company; Alton and Southern Railroad; Angelina & Neches River Railroad Company; Aransas Harbor Terminal Railway; Arkansas Railroad; Arkansas & Louisiana Missouri Railway Company; The Arkansas Western Railway Company; Asherton and Gulf Railway Company; Ashley, Drew & Northern Railway Company; The Atchison, Topeka and Santa Fe Railway Company; Atlantic Northern Railway Company; The Algoma Central and Hudson Bay Railway Company; The Arkansas Valley Interurban Railway Company; Aurora, Elgin and Fox River Electric Company; The Baltimore and Ohio Railroad Company; Bartlett-Western Railway; Bauxite & Northern Railway Company; The Beaumont, Sour Lake & Western Railway Company; Beaver, Meade and Englewood Railroad Company; Bevier & Southern Railroad Company; Big Fork and International Falls Railway Company; Blaney & Southern Railway Company; Blytheville, Leachville & Arkansas Southern Railroad Company; Brownwood North and South Railway Company; Bryan, Brazos & Burleson Railway Company; Brimstone Railroad & Canal Company; Butler County Railroad Company; The Baltimore and Ohio Chicago Terminal Railroad Company; The Belt Railway Company of Chicago; Cache Valley Railroad Company; Caddo & Choctaw Railroad Company; Cairo, Truman & Southern Railroad Company; Cape Girardeau Northern Railway Company and Clarence L. Grant, Receiver; Caro Northern Railway Company and W. M. Ross, Receiver; Cassville & Exeter Railway Company; Cazenovia Southern Railroad Company; Cedar Rapids and Iowa City Railway; Central Railway Company of Arkansas; Central Wisconsin Railway Company; Charles City Western Railway Company; The Chicago and Alton Railroad Company and Wm. W. Wheelock and Wm. G. Bierd, Receivers; Chicago and Eastern Illinois Railway Company; Chicago & Illinois Midland Railway Company; Chicago & Illinois Western Railroad; Chicago & North Western Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago, Harvard and Geneva Lake Railway Company; Chicago Great Western Railroad Company; Chicago, Milwaukee and St. Paul Railway Company; Chicago, North Shore and Milwaukee

Railroad Company; Chicago, Peoria and St. Louis Railroad Company and Bluford Wilson and Wm. Cotter, Receivers; The Chicago, Rock Island and Gulf Railway Company; The Chicago, Rock Island and Pacific Railway Company; Chicago, St. Paul, Minneapolis and Omaha Railway Company; Chicago, West Pullman & Southern Railroad Company; Christie & Eastern Railway Company; The Cincinnati, Indianapolis & Western Railroad Company; Cisco & Northeastern Railway Company; The Cleveland,
118 Cincinnati, Chicago and St. Louis Railway Company; The Clinton and Oklahoma Western Railroad Company; Clinton, Davenport & Muscatine Railway Company; Colfax Northern Railway Company; The Colorado and Southeastern Railroad Company; The Colorado and Southern Railway Company; The Colorado & Wyoming Railway Company; The Colorado-Kansas Railway Company; Combs, Cass and Eastern Railroad Company; Copper Range Railroad Company; Crittenden Railroad Company; Canadian National Railways; Canadian National Railway Company; Canadian Pacific Railway Company; Chicago and Erie Railroad Company; Chicago and Western Indiana Railroad Company; Chicago, Attica & Southern Railroad Company; Chicago, Aurora and Elgin Railroad Company; Chicago, Indianapolis and Louisville Railway Company; Chicago, Milwaukee and Gary Railway Company; The Chicago, Detroit and Canada Grand Trunk Junction Railroad Company (Canadian National Railway Company, Lessee); Cincinnati, Saginaw and Mackinaw Railroad Company (Canadian National Railway Company, Lessee); The Champlain and St. Lawrence Railroad Company (Canadian National Railway Company, Lessee); Dardanelle & Russellville Railroad Company; Davenport, Rock Island and North Western Railway Company; Dayton-Goose Creek Railway Company; Deering Southwestern Railway; The Denison and Pacific Suburban Railway Company; De Queen and Eastern Railroad Company; Des Moines & Central Iowa Railroad; Detroit, Grand Haven and Milwaukee Railway Company; Doniphan, Kensett & Searcy Railway; The Duluth and Iron Range Rail Road Company; Duluth & Northeastern Railroad Company, Duluth, Missabe and Northern Railway Company; The Duluth, South Shore and Atlantic Railway Company; Duluth, Winnipeg and Pacific Railway Company; Eastland, Wichita Falls & Gulf Railroad Company; East St. Louis, Columbia and Waterloo Railway; East Texas & Gulf Railway Company; East St. Louis Connecting Railway Company; El Dorado and Wesson Railway Company; Elgin, Joliet and Eastern Railway Company; El Paso & Rock Island Railway Company; El Paso & Southwestern Railroad Company; Escanaba & Lake Superior Railroad Company; The Ettrick & Northern Railroad Company and H. R. Madsen, Receiver; Farmers' Grain and Shipping Company; Fordyce and Princeton Railroad Company; Fort Dodge, Des Moines & Southern Railroad Company; Fort Smith and Western Railway Company; Fort Smith, Subiaco & Rock

Island Railroad Company; Fort Worth and Denver City Railway Company; Fort Worth & Rio Grande Railway Company; Fourche River Valley & Indian Territory Railway Company; The Franklin and Abbeville Railway Company; Fredericksburg & Northern Railway Company; Freeo Valley Railroad Company; Galesburg & Great Eastern Railroad Company; The Galveston, Harrisburg and San Antonio Railway Company; Galveston, Houston & Henderson Railroad Company; The Garden City Western Railway Company; Garyville Northern Railroad Company; Cazenovia Southern Railroad Company; Gideon and North Island Railroad Company; The Gilmore and Pittsburgh Railroad Company, Limited; Glenmora & Western Railway Company; Grand Trunk Western Railway Company; Grand Trunk-Milwaukee Car Ferry Company; Great Northern Railway Company; The Great Western Railway Company; Green Bay and Western Railroad Company; Groveton, Lufkin & Northern Railway Company; Gulf & Northern Railway Company; The Gulf & Sabine River Railroad Company; Gulf, Colorado and Santa Fe Railway Company; Gulf, Texas & Western Railway Company and W. Frank Knox, Receiver; Hannibal Connecting Railroad Company; Hanover Railway Company; The Helena, Parkin & Northern Railway Company and H. M. Gregory, Receiver; Hills-
119 boro and Northeastern Railway Company; Hill City Railway Company; Houston and Brazos Valley Railway Company; Houston and Shreveport Railroad Company; Houston & Texas Central Railroad Company; The Houston East and West Texas Railway Company; Iberia and Vermilion Railroad Company; Illinois Central Railroad Company; International-Great Northern Railroad Company; Iowa Southern Utilities Company; Illinois Terminal Company; Illinois Traction, Incorporated; Indiana Harbor Belt Railroad Company; Hooppole, Yorktown and Tampico Railroad Company; Graysonia, Nashville & Ashdown Railroad Company; Interstate Car Transfer Company; Iowa Railway & Light Company; Iowa & Omaha Short Line Railway Company; Iowa & Southwestern Railroad Company; Jefferson & Northwestern Railway Company; Jonesboro, Lake City & Eastern Railroad Company; The Kansas & Oklahoma Railway Company and H. A. Duvall, Receiver; Kansas City, Clinton and Springfield Railway Company; The Kansas City, Mexico & Orient Railroad Company and Wm. T. Kemper, Receiver; Kansas City, Mexico and Orient Railway Company of Texas; Kansas City Northwestern Railroad and Jay M. Lee, Receiver; The Kansas City Southern Railway Company; Kansas, Oklahoma & Gulf Railway Company and H. W. Gibson and H. L. Traber, Receivers; Kansas, Oklahoma & Gulf Railway Company of Texas; The Kansas and Sidell Railroad Company; Kewaunee, Green Bay and Western Railroad Company; Kinder & Northwestern Railroad Company; La Crosse and Southeastern Railway Company; Lake Charles & Northern

Railroad Company; The Lake Providence, Texarkana & Western Railroad; Lake Superior & Ishpeming Railroad Company; Laona and Northern Railway Company; The La Salle and Bureau County Railroad Company; The Leavenworth & Topeka Railroad Company; Leesville, Slagle and Eastern Railway Company; Litchfield and Madison Railway Company; Loranger, Louisiana & Northeastern Railroad Company and A. Loranger, Receiver; The Louisiana and North West Railroad Company; Louisiana and Pacific Railway Company; Louisiana & Pine Bluff Railway Company; Louisiana Southern Railway Company; Louisiana Western Railroad Company; Louisville and Nashville Railroad Company; Louisville, Henderson & St. Louis Railway Company; Lufkin, Hemphill and Gulf Railway Company; Manchester & Oneida Railway Company; Manila and Southwestern Railway Company; The Mansfield Railway and Transportation Company; Marinette, Tomahawk & Western Railroad Company; Mason City and Clear Lake Railroad Company; Mason & Fort Dodge Railroad Company; Miami Mineral Belt Railroad Company; The Michigan Central Railroad Company; The Midland and Northwestern Railway Company and N. G. Pearsall, Receiver; Midland Continental Railroad; The Midland Terminal Railway Company; Midland Valley Railroad Company; Mineral Point and Northern Railway Company; Mineral Range Railroad Company; Minneapolis & Rainy River Railway Company; The Minneapolis & St. Louis Railroad Company and W. H. Bremner, Receiver; Minneapolis, Northfield and Southern Railway; Minneapolis, Red Lake and Manitoba Railway Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Minnesota Western Railroad Company; Minnesota and International Railway Company; Minnesota, Dakota & Western Railway Company; Mississippi River and Bonne Terre Railway; Missouri and Illinois Bridge and Belt Railroad Company; Missouri-Illinois Railroad Company; Missouri and North Arkansas Railway Company; Missouri-Kansas-Texas Railroad Company; Missouri-Kansas-Texas Railroad Company of Texas; Missouri Pacific Railroad Company; Missouri Southern Railroad
120 Company; Mobile and Ohio Railroad Company; Monroe & Texas Railroad Company; Morgan's Louisiana and Texas Railroad and Steamship Company; Moscow, Camden & San Augustine Railway Company; Motley County Railway Company; Muscatine, Burlington & Southern Railroad Company and Arthur Hoffman, Receiver; Manufacturers' Railway Company (St. Louis); The Michigan Air Line Railway; The Midland Railway Company of Manitoba; Minneapolis, Anoka and Cuyuna Range Railway Company; Missouri Pacific Railroad Corporation in Nebraska; The Nacogdoches & Southeastern Railroad Company; Natchez, Columbia & Mobile Railroad Company; Natchez, Urania & Ruston Railway Company; Neame, Carson & Southern Railroad

Company; New Iberia & Northern Railroad Company; New Orleans, Natalbany and Natchez Railway Company; New Orleans, Texas & Mexico Railway Company; The New York Central Railroad Company; Northern Pacific Railway Company; North Louisiana & Gulf Railroad Company; The New York, Chicago and St. Louis Railroad Company; Oakdale & Gulf Railway Company; Oil Fields Short Line Railroad Company; Oklahoma City Junction Railway Company; Oklahoma, New Mexico & Pacific Railway Company; Oklahoma-Southwestern Railway Company; Okmulgee Northern Railway Company; Ontonagon Railroad Company; The Orange & Northwestern Railroad Company; Ouachita & Northwestern Railroad Company; Panhandle and Santa Fe Railway Company; Panuco Mountain & Monclova Railroad; Paris and Great Northern Railroad Company; Paris and Mount Pleasant Railroad Company and R. W. Wortham, Receiver; The Pecos Valley Southern Railway Company; The Pennsylvania Railroad Company; Peoria and Pekin Union Railway Company; Pine Bluff and Northern Railway Company and J. H. Riffel, Receiver; Port Bolivar Iron Ore Railway Company; Peoria Railway Terminal Company and W. G. Bierd and H. I. Battles, Receivers; Pere Marquette Railway Company; Quanah, Acme & Pacific Railway Company; Quincy, Omaha & Kansas City Railroad Company; Rapid City, Black Hills & Western Railroad Company; Red River and Gulf Railroad; Rio Grande Railway Company; Rio Grande and Eagle Pass Railway Company; The Rio Grande Junction Railway Company; The Rio Grande Southern Railroad Company; Roby & Northern Railroad Company; Rock Island Southern Railway Company; Rock Port, Langdon & Northern Railway Company; Roscoe, Snyder and Pacific Railway Company; The St. Joseph and Grand Island Railway Company; St. Louis and Hannibal Railroad Company; The St. Louis, Brownsville and Mexico Railway Company; St. Louis, El Reno and Western Railway Company and L. T. Tune, Receiver; St. Louis, Kennett & Southeastern Railroad Company; St. Louis-San Francisco Railway Company; St. Louis, San Francisco and Texas Railway Company; The St. Louis, Troy and Eastern Railroad Company; St. Louis Electric Terminal Railway Company; St. Louis Merchants Bridge Terminal Railway Company; St. Louis Transfer Railway Company; Salem, Winona and Southern Railroad Company; The San Antonio and Aransas Pass Railway Company; San Antonio Southern Railway Company; San Antonio, Uvalde & Gulf Railroad Company and A. R. Ponder, Receiver; San Benito and Rio Grande Valley Railway Company; Sand Springs Railway Company; Shelby County Railway Company; Shelby Northwestern Railway Company; Shreveport, Houston & Gulf Railroad Company; The Sibley, Lake Bisteneau & Southern Railway Company; The Sligo & Eastern Railroad Company; Southern Pacific Company; South-

ern Railway Company; Stanley, Merrill and Phillips Railway Company; Sugar Land Railway Company; The Tabor & Northern Railway Company; Tama and Toledo Railroad Company;
121 Terminal Railroad Association of St. Louis; Texarkana and Fort Smith Railway Company; The Texas and Pacific Railway Company; Texas and New Orleans Railroad Company; Texas City Terminal Railway Company; The Texas Mexican Railway Company; Texas Midland Railroad; Texas, Oklahoma & Eastern Railroad Company; Texas Short Line Railway Company; Texas South-Eastern Railroad Company; Thornton and Alexandria Railway Company; The Timpson & Henderson Railway Company; Tioga & South Eastern Railway Company; Toledo, Peoria & Western Railway Company and Samuel M. Russell, Receiver; Toledo, Saginaw and Muskegon Railway Company; Trans-Mississippi Terminal Railroad Company; Tremont & Gulf Railway Company; The Trinity and Brazos Valley Railway Company and J. A. Hulen, Receiver; Trinity Valley & Northern Railway Company; Trinity Valley Southern Railroad Company; Union Pacific Railroad Company; The Union Traction Company (Kansas); The United States and Canada Rail Road Company (Canadian National Railway Company, Lessee); Uvalde & Northern Railway Company; Vicksburg, Shreveport & Pacific Railway Company; Wabash Railway Company; The Wabash, Chester and Western Rail Road Company and J. Fred Gilster, Receiver; Warren & Ouachita Valley Railway Company; Warren & Saline River Railroad Company; Waterloo, Cedar Falls and Northern Railway Company; The Weatherford, Mineral Wells and Northwestern Railway Company; Westmoreland Interurban Railway Company; Wichita Falls and Southern Railroad Company; Wichita Falls, Ranger & Fort Worth Railroad Company and J. W. Mitchell, Receiver; The Wichita Northwestern Railway Company and O. P. Byers, Receiver; The Wichita Valley Railway Company; Wisconsin & Michigan Railroad Company; The Wiggins Ferry Company; The Westfield Railroad Company; The Woodworth & Louisiana Central Railway Company; and The Yazoo and Mississippi Valley Railroad Company

No. 16309

South Dakota Independent Oil Jobbers Association

v.

The Atchison, Topeka and Santa Fe Railway Company; The Chicago and Alton Railroad Company and W. W. Wheelock and W. G. Bierd, Receivers; Chicago and North Western Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago, Great Western Railroad Company; Chicago, Milwaukee and St. Paul Railway Company; The Chicago, Rock Island and Pacific Railway Company; Chicago, St. Paul, Minneapolis and

Omaha Railway Company; Elgin, Joliet and Eastern Railway Company; Fort Smith and Western Railway Company; Great Northern Railway Company; Gulf, Colorado and Santa Fe Railway Company; Illinois Central Railroad Company; Illinois Terminal Company; Indiana Harbor Belt Rail Road Company; The Kansas City Southern Railway Company; Kansas, Oklahoma & Gulf Railway Company and H. W. Gibson and H. L. Traber, Receivers; Midland Valley Railroad Company; The Minneapolis & St. Louis Railroad Company and W. H. Bremner, Receiver; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Missouri and North Arkansas Railway Company; Missouri-Kansas-Texas Railroad Company; Missouri Pacific Railroad Company; Oil Fields Short Line Railroad Company; Oklahoma & Arkansas Railway Company; Oklahoma Railway Company; Oklahoma Union Railway Company; Oklahoma, New Mexico & Pacific Railway Company; Oklahoma Southwestern
122 Railway Company; Okmulgee Northern Railway Company; Osage Railway Company; The Pennsylvania Railroad Company; Quincy, Omaha & Kansas City Railroad Company; Rapid City, Black Hills & Western Railroad Company; St. Louis, El Reno and Western Railway Company and L. T. Tune, Receiver; St. Louis-San Francisco Railway Company; Sand Springs Railway Company; The Union Traction Company; Wabash Railway Company; and Wyoming & Missouri River Railway Company

No. 17304

International Oil Company; Independent Oil Company; Red Trail Transfer Company; Northwood Oil Company; Motor Oil Company; Consumers Home Oil Company; Douglas Oil Company; Alvarado Oil Company; The Fergus Oil Company; The Peoples Service Oil Company; Pope County Oil Company; Johnson Oil Company; Mahnomen Oil Company; Moorhead Oil Company; Helgerud Oil Company; Kloten Oil Company; Kellsvig Oil Company

v.

Abilene and Southern Railway Company; Ahnapee and Western Railway Company; The Alabama and Vicksburg Railway Company; Alexandria & Western Railway Company; Alton and Southern Railroad; Angelina & Neches River Railroad Company; Aransas Harbor Terminal Railway; Arkansas Railroad; Arkansas & Louisiana Missouri Railway Company; The Arkansas Western Railway Company; Asherton and Gulf Railway Company; Ashley, Drew & Northern Railway Company; The Atchison, Topeka and Santa Fe Railway Company; Atlantic Northern Railway Company; The Algoma Central and Hudson Bay Railway Company; The Arkansas Valley Interurban Railway Company; Aurora, Elgin and Fox River Electric Company

The Baltimore and Ohio Railroad Company; The Baltimore and Ohio Chicago Terminal Railroad Company; Bartlett-Western Railway; Bauxite & Northern Railway Company; The Beaumont, Sour Lake & Western Railway Company; Beaver, Meade and Englewood Railroad Company; The Belt Railway Company of Chicago; Bevier & Southern Railroad Company; Big Fork and International Falls Railway Company; Blaney & Southern Railway Company; Blytheville, Leachville & Arkansas Southern Railroad Company; The Brownwood North and South Railway Company; Bryan, Brazos & Burleson Railway Company; Brimstone Railroad & Canal Company; Butler County Railroad Company

Cache Valley Railroad Company; Cairo, Truman & Southern Railroad Company; Cape Girardeau Northern Railway Company and Clarence L. Grant, Receiver; Caro Northern Railway Company and W. M. Ross, Receiver; Cassville & Exeter Railway Company; Cazenovia Southern Railroad Company; Cedar Rapids and Iowa City Railway; Central Railway Company of Arkansas; Fairchild & North-Eastern Railway Company; Charles City Western Railway Company; The Chicago and Alton Railroad Company and Wm. W. Wheelock and Wm. G. Bierd, Receivers; Chicago and Eastern Illinois Railway Company; Chicago & Illinois Midland Railway Company; Chicago & Illinois Western Railroad; Chicago and North Western Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago, Harvard and Geneva Lake Railway Company; Chicago Great Western Railroad Company; Chicago, Milwaukee and St. Paul Railway Company and H.
123 E. Byram, M. W. Potter, and E. J. Brundage, Receivers; Chicago, North Shore and Milwaukee Railroad Company; Chicago, Peoria and St. Louis Railroad Company and Wm. Cotter, Receiver; The Chicago, Rock Island and Gulf Railway Company; The Chicago, Rock Island and Pacific Railway Company; Chicago, St. Paul, Minneapolis and Omaha Railway Company; Chicago, West Pullman & Southern Railroad Company; Christie & Eastern Railway Company; The Cincinnati, Indianapolis & Western Railroad Company; Cisco & Northeastern Railway Company; The Cleveland, Cincinnati, Chicago and St. Louis Railway Company; The Clinton and Oklahoma Western Railroad Company; Clinton, Davenport & Muscatine Railway Company; Colfax Northern Railway Company; The Colorado and Southeastern Railroad Company; The Colorado and Southern Railway Company; The Colorado & Wyoming Railway Company; The Colorado-Kansas Railway Company; Combs, Cass and Eastern Railroad Company; Copper Range Railroad Company; Crittenden Railroad Company; Canadian National Railways; Canadian National Railway Company; Canadian Pacific Railway Company; Chicago and Erie Railroad Company; Chicago and Western Indiana Railroad Company; Chicago, Attica & Southern Railroad

Company; Chicago, Aurora and Elgin Railroad Company; Chicago, Indianapolis and Louisville Railway Company; Chicago, Milwaukee and Gary Railway Company; The Chicago, Detroit and Canada Grand Trunk Junction Railroad Company (Canadian National Railway Company, Lessee); Cincinnati, Saginaw and Mackinaw Railroad Company (Canadian National Railway Company, Lessee); The Champlain and St. Lawrence Railroad Company (Canadian National Railway Company, Lessee)

Dardanelle & Russellville Railroad Company; Davenport, Rock Island and North Western Railway Company; Dayton-Goose Creek Railway Company; Deering Southwestern Railway; The Denison and Pacific Suburban Railway Company; DeQueen and Eastern Railroad Company; Des Moines & Central Iowa Railroad; Detroit, Grand Haven and Milwaukee Railway Company; Doniphan, Kensett & Searcy Railway; The Duluth and Iron Range Rail Road Company; Duluth & Northeastern Railroad Company; Duluth, Missabe and Northern Railway Company; The Duluth, South Shore and Atlantic Railway Company; Duluth, Winnipeg and Pacific Railway Company

Eastland, Wichita Falls & Gulf Railroad Company; East St. Louis, Columbia and Waterloo Railway; East Texas & Gulf Railway Company; East St. Louis Connecting Railway Company; El Dorado and Wesson Railway Company; Minnesota Western Railroad Company; Elgin, Joliet and Eastern Railway Company; Escanaba & Lake Superior Railroad Company; The Ettrick & Northern Railroad Company and H. R. Madsen, Receiver

Farmers' Grain and Shipping Company; Fordyce and Princeton Railroad Company; Fort Dodge, Des Moines & Southern Railroad Company; Fort Smith and Western Railway Company; Fort Smith, Subiaco & Rock Island Railroad Company; Fort Worth and Denver City Railway Company; Fort Worth & Rio Grande Railway Company; Fourche River Valley & Indian Territory Railway Company; The Franklin and Abbeville Railway Company; Fredericksburg & Northern Railway Company

Galesburg & Great Eastern Railroad Company; Hooppole, Yorktown and Tampico Railroad Company; The Galveston, Harrisburg and San Antonio Railway Company; Galveston, Houston & Henderson Railroad Company; The Garden City Western Railway Company; Garyville Northern Railroad Company; Gideon and North Island Railroad Company; The Gilmore and Pittsburgh Railroad Company, Limited; Grand Trunk Western Railway Company; Grand Trunk-Milwaukee Car Ferry Com-
124 pany; Great Northern Railway Company; The Great Western Railway Company; Green Bay and Western Railroad Company; Groveton, Lufkin & Northern Railway Company; Gulf & Northern Railway Company; The Gulf & Sabine River Railroad Company; Gulf, Colorado and Santa Fe Railway Company; Gulf, Texas & Western Railway Company and W. Frank Knox, Receiver.

Hannibal Connecting Railroad Company; Hanover Railway Company; The Helena, Parkin & Northern Railway Company and H. M. Gregory, Receiver; Hillsboro and Northeastern Railway Company; Hill City Railway Company; Houston and Brazos Valley Railway Company; Houston and Shreveport Railroad Company; Houston & Texas Central Railroad Company; The Houston East and West Texas Railway Company

Iberia and Vermilion Railroad Company; Illinois Central Railroad Company; International-Great Northern Railroad Company; Iowa Southern Utilities Company; Illinois Terminal Company; Illinois Traction, Incorporated; Indiana Harbor Belt Railroad Company; Interstate Car Transfer Company; Iowa Railway and Light Company; Iowa & Omaha Short Line Railway Company; Jefferson & Northwestern Railway Company; Jonesboro, Lake City and Eastern Railroad Company

The Kansas & Oklahoma Railway Company and H. J. Duvall, Receiver; The Kansas City, Mexico and Orient Railway Company; Kansas City, Mexico and Orient Railway Company of Texas; The Kansas City Southern Railway Company; Kansas, Oklahoma & Gulf Railway Company and H. W. Gibson and H. L. Traber, Receivers; Kansas, Oklahoma & Gulf Railway Company of Texas; The Kansas and Sidell Railroad Company; Kewaunee, Green Bay and Western Railroad Company; Kinder & Northwestern Railroad Company; La Crosse and Southeastern Railway Company; Lake Charles & Northern Railroad Company; The Lake Providence, Texarkana & Western Railroad; Lake Superior & Ishpeming Railroad Company; Laona and Northern Railway Company; The La Salle and Bureau County Railroad Company; The Leavenworth & Topeka Railroad Company; Leesville, Slagle and Eastern Railway Company; Litchfield and Madison Railway Company; Loranger, Louisiana & Northeastern Railroad Company and A. Loranger, Receiver; Louisiana & Arkansas Railway Company; The Louisiana and North West Railroad Company; Louisiana and Pacific Railway Company; Louisiana & Pine Bluff Railway Company; Louisiana Southern Railway Company; Louisiana Western Railroad Company; Louisiana Railway & Navigation Company; Louisville and Nashville Railroad Company; Louisville, Henderson & St. Louis Railway Company; Lufkin, Hemphill and Gulf Railway Company

Manchester & Oneida Railway Company; Manila and Southwestern Railway Company; The Mansfield Railway & Transportation Company; Marinette, Tomahawk & Western Railroad Company; Mason City and Clear Lake Railroad Company; Mason City & Fort Dodge Railroad Company; Memphis-Dallas Gulf Railway; Miami Mineral Belt Railroad Company; The Michigan Central Railroad Company; The Midland and Northwestern Railway Company and

M. G. Pearsall, Receiver; Midland Continental Railroad; The Midland Terminal Railway Company; Midland Valley Railroad Company; Mineral Point and Northern Railway Company; Mineral Range Railroad Company; Minneapolis & Rainy River Railway Company; The Minneapolis & St. Louis Railroad Company and W. H. Bremner, Receiver; Minneapolis, Northfield and Southern Railway; Minneapolis, Red Lake and Manitoba Railway Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Minnesota and International Railway Company; Minnesota, Dakota & Western Railway Company; Mississippi
125 River and Bonne Terre Railway; Missouri and Illinois Bridge and Belt Railroad Company; Missouri-Illinois Railroad Company; Missouri and North Arkansas Railway Company; Missouri-Kansas-Texas Railroad Company; Missouri-Kansas-Texas Railroad Company of Texas; Missouri Pacific Railroad Company; Missouri Southern Railroad Company; Mobile and Ohio Railroad Company; Monroe & Texas Railroad Company; Morgan's Louisiana and Texas Railroad and Steamship Company; Moscow, Camden & San Augustine Railroad; Motley County Railway Company; Manufacturers' Railway Company (St. Louis); The Michigan Air Line Railway; The Midland Railway Company of Manitoba; Minneapolis, Anoka and Cuyuna Range Railway Company; Missouri Pacific Railroad Corporation in Nebraska

The Nacogdoches & Southeastern Railroad Company; Natchez, Columbia & Mobile Railroad Company; Natchez, Urania & Ruston Railway Company; Neame, Carson & Southern Railroad Company; New Iberia & Northern Railroad Company; New Orleans, Natalbany and Natchez Railway Company; New Orleans, Texas & Mexico Railway Company; The New York Central Railroad Company; Northern Pacific Railway Company; North Louisiana & Gulf Railroad Company; The New York, Chicago and St. Louis Railroad Company

Oakdale & Gulf Railway Company; Oklahoma City Junction Railroad Company; Oklahoma, New Mexico & Pacific Railway Company; Oklahoma-Southwestern Railway Company; Okmulgee Northern Railway Company; Ontonagon Railroad Company; The Orange & Northwestern Railroad Company; Ouachita and Northwestern Railroad Company

Panhandle and Santa Fe Railway Company; Panuco Mountain & Monclova Railroad; Paris and Great Northern Railroad Company; Paris and Mount Pleasant Railroad Company and R. W. Wortham, Receiver; The Pecos Valley Southern Railway Company; The Pennsylvania Railroad Company; Peoria and Pekin Union Railway Company; Pine Bluff and Northern Railway Company and J. K. Riffel, Receiver; Port Bolivar Iron Ore Railway Company; Peoria Railway Terminal Company and W. G. Bierd and H. I. Battles, Receivers; Pere Marquette Railway Company; Quanah, Acme & Pacific Railway Company; Quincy, Omaha & Kansas City Railroad Company

Rapid City, Black Hills & Western Railroad Company; Red River and Gulf Railroad; Rio Grande Railway Company; Rio Grande and Eagle Pass Railway Company; The Rio Grande Junction Railway Company; The Rio Grande Southern Railroad Company; Roby & Northern Railroad Company; Rock Island Southern Railway Company; Rock Port, Langdon & Northern Railway Company; Roscoe, Snyder and Pacific Railway Company

The St. Joseph and Grand Island Railway Company; St. Louis and Hannibal Railroad Company; The St. Louis, Brownsville and Mexico Railway Company; The New York Central Railroad Company and L. T. Tune, Receiver; St. Louis, Kennett & Southeastern Railroad Company; St. Louis-San Francisco Railway Company; St. Louis, San Francisco and Texas Railway Company; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; The St. Louis, Troy and Eastern Railroad Company; St. Louis Electric Terminal Railway Company; St. Louis Merchants Bridge Terminal Railway Company; St. Louis Transfer Railway Company; Salem, Winona and Southern Railroad Company; San Antonio-Southern Railway Company; San Antonio, Uvalde & Gulf Railroad Company and A. R. Ponder, Receiver; San Benito and Rio Grande Valley Railway Company; Sand Springs Railway Company; Shelby County Railway Company; Shelby Northwestern Railway Company;
126 Shreveport, Houston & Gulf Railroad Company; The Sibley, Lake Bisteneau & Southern Railway Company; The Sligo & Eastern Railroad Company; Southern Pacific Company; Southern Railway Company; Sugar Land Railway Company

The Tabor & Northern Railway Company; Tama and Toledo Railroad Company; Terminal Railroad Association of St. Louis; Texarkana and Fort Smith Railway Company; The Texas & Pacific Railway Company; Texas and New Orleans Railroad Company; Texas City Terminal Railway Company; The Texas Mexican Railway Company; Texas Midland Railroad; Texas, Oklahoma & Eastern Railroad Company; Texas Short Line Railway Company; Texas South-Eastern Railroad Company; Thornton and Alexandria Railway Company; The Timpson & Henderson Railway Company; Tioga & South Eastern Railway Company; Toledo, Peoria & Western Railway Company and Samuel M. Russell, Receiver; Toledo, Saginaw and Muskegon Railway Company; Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans; Tremont & Gulf Railway Company; The Trinity and Brazos Valley Railway Company and J. A. Hulen, Receiver; Trinity Valley & Northern Railway Company; Trinity Valley Southern Railroad Company

Union Pacific Railroad Company; The Union Traction Company (Kansas); The United States and Canada Rail Road Company (Canadian National Railway Company, Lessee); Uvalde & Northern Railway Company; Vicksburg, Shreveport & Pacific Railway

Company; Wabash Railway Company; The Wabash, Chester and Western Rail Road Company and J. Fred Gilster, Receiver; Warren & Ouachita Valley Railway Company; Warren & Saline River Railroad Company; Waterloo, Cedar Falls and Northern Railway Company; The Weatherford, Mineral Wells and Northwestern Railway Company; Westmoreland Interurban Railway Company; Wichita Falls and Southern Railroad Company; Wichita Falls, Ranger & Fort Worth Railroad Company and J. W. Mitchell, Receiver; The Wichita Northwestern Railway Company and O. P. Byers, Receiver; The Wichita Valley Railway Company; Wisconsin & Michigan Railroad Company; The Wiggins Ferry Company; The Westfield Railroad Company; The Woodworth & Louisiana Central Railway Company; and The Yazoo and Mississippi Valley Railroad Company

These cases being at issue with respect to the rates on petroleum and petroleum products from various producing fields to destinations in South Dakota, North Dakota, and northwestern Minnesota, and the commission having, on the date hereof, made and filed a supplemental report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the above-named defendants, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist on or before June 14, 1928, and thereafter to abstain, from publishing, demanding, or collecting rates for the transportation of petroleum and petroleum products, in carloads, from and to the points or groups specified in the next succeeding paragraph hereof, which exceed the rates or basis of rates, or which as to rates from the mid-continent field depart from the origin relationships therein prescribed.

127 It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before June 14, 1928, upon notice to this commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of petroleum and petroleum products, in carloads, from and to the various groups and points specified in the findings of the attached report, rates per 100 pounds which shall not exceed the rates or basis of rates, and which as to rates from the mid-continent field do not depart from the origin relationships, set forth in such findings and the appendixes therein referred to.

And it is further ordered, That this order shall continue in force until the further order of the commisison.

By the commission.

[SEAL.] GEORGE B. MCGINTY,
Secretary.

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Exhibit C to petition

Interstate Commerce Commission

Investigation and Suspension Docket No. 3148

Petroleum and Its Products from Points in Wyoming to South Dakota, North Dakota, Montana, Iowa, Minnesota, and Nebraska

Submitted December 10, 1928. Decided March 30, 1929

Proposed revision consisting generally of reductions in rates on petroleum and its products taking the same basis from Casper, Wyo., and related originating points in Wyoming to destinations in South Dakota, North Dakota, Minnesota, Montana, Nebraska, and Iowa found unlawful. Suspended schedules required to be canceled and proceeding discontinued.

P. F. Gault, Walter McFarland, A. H. Lossow, J. N. Davis, M. L. Countryman, jr., R. H. Hagman, and G. M. Swanstrom for respondents.

Raymond L. Dillman, D. L. Kelley, and Dawes E. Brisbine for Board of Railroad Commissioners of South Dakota and Traffic Bureaus of Aberdeen, Watertown, and Huron, S. Dak.; Claude L. Draper, F. Chatterton and C. H. McWhinnie for Public Service Commission of State of Wyoming; and L. L. Stephens for Standard Oil Company (Indiana); Chas. Ervin for Texas Company; Daniel F. McCarthy for Producers & Refiners Corporation; B. A. Thompson for Midwest Refining Company; and P. R. Naylor and P. H. Kuhns for Continental Oil Company.

James F. Lawrence, A. F. Winn, H. W. Roe, and W. W. Klingensmith for protestants.

Karl Knox Gartner for North Dakota Petroleum Association; B. J. Burchett for Shaffer Oil & Refining Company; Henry Hauseman for Pure Oil Company; and H. W. Robertson and H. H. Singer for Sinclair Refining Company.

REPORT OF THE COMMISSION

Division 5, Commissioners Lewis, Brainerd, and Farrell

BRAINERD, Commissioner:

This is an inquiry instituted upon complaint under section 15 (7) concerning the lawfulness of certain schedules stating new individual and joint rates applicable on petroleum and its products in tank carloads from Casper and other producing points in Wyoming to points in North Dakota, South Dakota, and certain stations in Minnesota, Iowa, Nebraska, and Montana. The schedules
129 were suspended pending hearing, which has been had, and the matter has been submitted for decision upon briefs without oral argument.

The protestants allege that the proposed rates are unlawful because they are less than just and unreasonable and because they give an undue or unreasonable preference or advantage to the shippers and localities situated in the origin territory, and subject the shippers and localities in Kansas, Oklahoma, and other portions of the Southwest located in what is generally known as the mid-continent field and the carriers transporting the traffic therefrom to an undue or unreasonable prejudice or disadvantage in reaching and marketing their products in the destination territory named in said schedules, contrary to and in violation of the first and third sections of the act.

In Midcontinent Oil Rates, 1925, 139 I. C. C. 605, we had before us the rates from the mid-continent field to North Dakota and South Dakota. In previous decisions in the same case we had fixed rates from the mid-continent field to Minnesota, Iowa, Nebraska, Wisconsin, etc. In our decision in 139 I. C. C. 605 we prescribed maximum rates from the mid-continent field to North Dakota and South Dakota. These rates became effective June 14, 1928. In the same case we had before us the reasonableness of the rates from the Wyoming field to points in South Dakota. We found that the existing rates to the eastern half of the State were not unreasonably high, but that the rates to central and western points should be graded upon a somewhat lower basis, as, for instance, 50 cents to Mitchell, Huron, and Redfield, 45 cents to Pierre and Chamberlain, 40 cents to Belle Fourche, and 36 cents to Rapid City, and that rates to points in central and western South Dakota in excess thereof would be unreasonable to the extent that they exceeded the rates so designated.

The rates on gasoline are the principal ones in issue and South Dakota and North Dakota are the principal destination territories. Casper on the Chicago & North Western and the Chicago, Burlington & Quincy, hereinafter called the North Western and the Burlington, respectively, is the principal originating point. The line of the former carrier serves South Dakota extensively. Other destination carriers respondent include the Chicago, Milwaukee, St. Paul & Pacific, Great Northern, Northern Pacific, Minneapolis, St. Paul & Sault Ste. Marie, and the Minneapolis & St. Louis. The purposed rates are reductions from those considered in the Midcontinent case, supra. In general they restore the rate relationship existing prior thereto between the mid-continent field and the Wyoming field to points in the destination territory here involved. In some instances the proposed rates are lower than those existing prior to said decisions; there are a few increases to points in Minnesota and
130 North Dakota. The reductions average approximately 6.5 cents per 100 pounds. The producers and refiners in both origin territories are engaged in marketing their products in the destination territory where they come into keen competition with each other in making sales. There is not much competition from other sources. The destination territory is generally closer to the Wyoming

field and the rates from said field are generally less in cents per 100 pounds to said territory, except to certain points in the eastern part of the Dakotas and the western part of Minnesota, than from mid-continent Group 3, and the producers and refiners at Casper and vicinity are in a position so far as the mid-continent competition is concerned to control the market price at which the commodities are sold at most of these stations. Traffic over the Burlington is routed generally via Laurel, Mont., or Sioux City, Iowa. Traffic over the North Western moves through Rapid City to connections at Oakes, N. Dak., Aberdeen and Watertown, S. Dak., Sioux City or the Twin Cities. The carriers' witnesses testified that the proposed rates were less than reasonable maxima. The principal witness described them as being far below what he considered reasonable maxima. The sole purpose in proposing said schedules, as explained by the carriers, was to restore the former relationship existing between the Wyoming and mid-continent fields and prevent a shift of tonnage from Casper to other producing points. The only evidence offered to show that the present rates from Casper are in excess of reasonable maxima was offered by the South Dakota commission and is substantially the same evidence that was presented in the former case and considered by the commission in reaching its decision in the Midcontinent case, supra. The table attached hereto as an appendix to this report, compiled from exhibits of record, compares rates and earnings on refined oil from Casper and from Group 3 to the destinations in South Dakota specified in Appendix A of the report in the Midcontinent case, supra, and also contains similar comparisons covering certain North Dakota destinations named in Appendix C of the same report. The evidence shows that the respondent carriers earn a larger percentage of the freight revenue from traffic moving from Casper than they earn upon traffic moving from the mid-continent field or from any other source of supply located beyond their rails. The volume of business done by the respective producing fields depends to a considerable extent upon the freight rates. The destination lines are the same whether the traffic moves from Casper or from the mid-continent field. The rates from the mid-continent field now in effect are the maximum rates prescribed in Midcontinent Rates, supra, and the present rates from Casper to South Dakota are
131 those reviewed, revised, and approved in that case as not in excess of reasonable maxima. The rates from Casper to North Dakota and the other destination territory herein involved are substantially in harmony, distance, and transportation conditions considered with the rates found reasonable to South Dakota points. The proposed rates from Casper are relatively lower, distance and transportation conditions considered, than the rates from the mid-continent field. In the year 1927 the North Western delivered to points in South Dakota, 4,262 cars of oil, of which 2,798 cars originated in Wyoming and 1,384 in the mid-continent field, including Kansas

City. Companies which control a very large percentage of the Casper production sold 62 per cent of the refined petroleum in North Dakota in 1927. The hearing herein was had on September 26, 1928, and upon later dates. The new rates from both Casper and the mid-continent field had then been in effect since June 14, a period of over three months. None of the witnesses was able to show that there had been any material shift of tonnage in that period. Figures submitted by the Burlington show that in August, 1928, Casper shipped eastbound, largely to South Dakota, 176 cars, as against 90 cars in August, 1927, and that the total petroleum shipments eastbound from Casper (a considerable part of which undoubtedly went to the destination territory here involved) were 4,996 cars in August, 1928, as against 4,971 cars in August, 1927. A representative of the principal shipper from Casper, who also operates refineries in Whiting, Ind., and Kansas City, Mo., testified on September 30, 1928, that up to that time there had been no shift in tonnage from Casper. He was unable to say that there would be any shift to either Whiting or Kansas City in the event the suspended schedules were canceled, nor would he say that there would be any material shift in tonnage to the mid-continent field in such an event. In North Dakota the retail sales of petroleum products are made partly by independent dealers and partly by such large companies as the Standard Oil Company of Indiana and its subsidiaries. The latter companies generally sell direct from refinery to consumer and sell over 60 per cent of the total amount sold, shipping largely from Casper. The independent shippers are not able to buy from producers at Casper to any material extent for the reason that the Casper tonnage is controlled principally by the companies who sell direct to consumers and who refuse to sell through independent jobbers. The present rate from the mid-continent field and the proposed rates from the Wyoming field are approximately upon the same level. One witness testified that the rates from the mid-continent field represented 25.75 per cent of the first-class southwestern scale, whereas the proposed rates from Casper represented

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western scale, whereas the proposed rates from Casper represented 25.05 per cent of the same scale. Another witness said that rates from both origins were based upon 25 per cent of the southwestern first-class scale, while another gave the mid-continent rates as representing 25.2 per cent and the Wyoming rates as 26.1 per cent of said scale. Transportation conditions from the Wyoming field are more difficult and unfavorable than those from the mid-continent field. The lines and routes from Casper to both North and South Dakota are lines and routes of low traffic density. The present rates from Casper to North Dakota are lower than rates found reasonable for equal distances from Casper to points in Montana in Texas Company v. C., B. & Q. R. R. Co., 101 I. C. C. 734. The proposed rates are lower than the present rates and very much lower than the rates found reasonable in the Montana case. The Board of

Railroad Commissioners of South Dakota contend not only that the proposed rates are not unreasonably low but that they are in fact not less than reasonable maximum rates. They endeavor to support this contention by elaborate exhibits. But the issue of what will constitute reasonable maximum rates for this traffic is not before us in the present proceeding.

The respondent carriers contend that the proposed rates are published in order to assist the Wyoming refiners in holding the market and to prevent a shift of tonnage from the Wyoming field to other points of the respondent carriers' lines, which they say would result in a loss to them of a substantial amount in freight revenue because their earnings on the Wyoming traffic even under the reduced rates proposed will be greater than their earnings from the division of rates applying on traffic from the mid-continent field, Whiting, or other points off their lines. No divisions are shown of record. However, we believe that no such consequences can be reasonably expected to result from the present rate adjustment. The respondents justify the proposed rates by motives of self-interest, but the proposed reductions based upon present movements from the Wyoming field will reduce the freight revenues of the respondent North Western more than $350,000 per annum. Moreover, no carrier subject to our jurisdiction has the right to adjust rates in favor of industries on its own line in such a way as to prevent legitimate competition at points on its line where, as here, it is the delivering line for traffic moving from points off as well as points on its line. The greater portion of the commodity here involved moves under the present rates from the Wyoming field. Under the proposed rates this preponderance of traffic from Wyoming would undoubtedly be increased rather than diminished:

"The effort of a carrier to obtain more business, and to retain that which it had secured, proceeds from the motive of self-interest
133 which is recognized as legitimate; and the fact that preferential rates were given only for this purpose relieves the carrier from any charge of favoritism or malice. But preferences may inflict undue prejudice though the carrier's motives in granting them are honest. United States v. Illinois Cent. R. R., 263 U. S. 515, 523."

The protestants contend that the relationship between the rates from the Wyoming and mid-continent fields and many of the destination points covered by the proposed schedules was an issue raised and passed upon in our decisions in the Midcontinent case, supra, and that therefore said matter ought not to be here reviewed except upon a petition for rehearing duly filed in said cause (such a petition has been filed, considered, and denied); and that the evidence herein shows the proposed schedules to be preferential of the Wyoming field and prejudicial to the mid-continent field, as alleged.

An examination of our report and orders in the Midcontinent case discloses that while there may have been no allegation of undue preference and prejudice in the complaints there considered involving the rate relationship between the Wyoming and the mid-continent fields, the relationship of the rates between the two fields was nevertheless discussed and passed upon by us in fixing maximum rates to be applied upon traffic moving from both fields, also from Whiting, to common points of destination in South Dakota. In discussing this relationship we said at page 615:

"One of the arguments most strongly advanced by defendants against any reduction in rates from the mid-continent field to North Dakota and Minnesota is that rates from Wyoming and Montana to these States are made with relation to the rates from Group 3 and that any reduction in the rates from Group 3 will necessitate corresponding reductions from Wyoming and Montana."

And again on page 611, we said:

"Rates from Wyoming to South Dakota may properly afford higher earnings than rates from Group 3, not only because of the shorter distances but also because practically the entire haul from Wyoming is within a territory much less favorable from a traffic standpoint than the territory east of the Missouri River through which a large part of the transportation from Group 3 takes place."

While it is true that no order was entered in the above case predicated upon findings under section 3, we considered and prescribed what in our opinion would be maximum and nonprejudicial rates from both the Wyoming and mid-continent fields and also from Whiting to common points of destination. Where rates from various origin territories on the same commodities to common destinations served by the same carrier are fixed by us under section 1 of the act their relationship is necessarily involved. Such relationship was properly considered by us in the cases quoted from above. We do not wish to be understood as saying that in such a case the
134 carriers are estopped from proposing rates with other or different relationships as is done here, but simply as holding that the results reached by us in other cases under the circumstances stated above are entitled to consideration together with the other relevant facts and circumstances of record in reaching a determination of the matters before us.

We are of the opinion and find that the rates proposed are not less than reasonable minimum rates, but that they would give an undue and unreasonable preference and advantage to the shippers and localities situated in the origin territory and subject the shippers and localities in the mid-continent field to an undue and unreasonable prejudice and disadvantage, contrary to section 3 of the act.

An appropriate order will be entered requiring the cancellation of said schedules, and dismissing this proceeding.

APPENDIX

Comparisons of rates on refined oil from mid-continent Group 3 and Casper

To—	From Casper						From Group 3			
	Distance	Rates prior to June 14, 1928	Rates effective June 14, 1928	Ton-mile earnings after June 14, 1928	Rates suspended	Ton-mile earnings of suspended rates	Distance	Rates prior to June 14, 1928	Rates effective June 14, 1928, and at present	Ton-mile earnings after June 14, 1928
	Miles	*Cents*	*Cents*	*Mills*	*Cents*	*Mills*	*Miles*	*Cents*	*Cents*	*Mills*
Sioux City, Iowa	595	39.5	[1] 39.5	13.3	.....	.....	610	36	[1] 36	11.80
Sioux Falls, S. Dak	674	45	[1] 45	13.4	.....	.....	701	40	[1] 40	11.41
Yankton, S. Dak	719	53.5	[1] 53.5	14.8	41	11.40	672	53.5	41	12.20
Mitchell, S. Dak	574	53.5	50	17.4	41	13.94	747	58.5	45	12.05
Huron, S. Dak	575	53.5	50	17.4	40.5	14.11	797	61	48	12.05
Winner, S. Dak	693	61	[1] 61	17.6	46	13.28	807	69	54	13.37
Chamberlain, S. Dak	507	53.5	45	17.8	39.5	15.60	814	66	52	12.77
Watertown, S. Dak	671	53.5	[2] 53.5	15.9	45	13.41	828	58.5	50	12.08
Aberdeen, S. Dak	643	53.5	53.5	16.6	41	12.80	875	67.5	55	12.58
Murdo, S. Dak	432	51	45	20.8	38	17.59	889	65	58	13.05
Pierre, S. Dak	455	53.5	45	19.8	40.5	17.80	916	70.5	59	12.88
Roscoe, S. Dak	685	53.5	53.5	15.6	45	13.14	917	67.5	59	12.87
Midland, S. Dak	404	51	[3] 45	18.8	38	18.81	967	92	63	13.03
Mobridge, S. Dak	741	59.5	59.5	16.1	49	13.23	974	73.5	63	12.93
Rapid City, S. Dak	288	43.5	36	25.0	[1] 36	25.00	1,033	91	68	13.17
Isabel, S. Dak	803	71.5	71.5	17.8	50	12.45	1,036	90.5	70	13.51
Deadwood, S. Dak	333	47.5	40	24.0	[1] 40	24.00	1,064	91	70	13.16
Lemmon, S. Dak	840	70	70	16.7	49.5	11.80	1,073	90.5	70	13.05
Belle Fourche, S. Dak	343	50	40	23.3	[1] 40	23.30	1,087	93	72	13.25
Faith, S. Dak	874	71.5	71.5	16.4	50	11.44	1,106	99	75	13.56
Average [4]	587.7	55.8	52.4	18.4	42.7	15.73	922	77.1	59.5	12.86

[1] No change in the rate previously effective.
[2] Present rate, 50 cents.
[3] Present rate, 38 cents.
[4] Average computed omitting data relating to Sioux City, Iowa, and Sioux Falls, S. Dak., to which suspended rates do not apply.

135 *Comparison of rates on refined oil from mid-continent Group 3 and Casper*—Continued

To—	From Casper					From Group 3			
	Distance	Rates prior to June 14, 1928	Ton-mile earnings prior to June 14, 1928	Suspended rates	Earnings per ton-mile under suspended rates	Distance	Rates prior to June 14, 1928	Rates effective June 14, 1928	Earnings per ton-mile after June 14, 1928
	Miles	*Cents*	*Mills*	*Cents*	*Mills*	*Miles*	*Cents*	*Cents*	*Mills*
St. Paul, Minn	854	45	10.54	.....	.....	822	42	[1] 42	10.20
Willmar, Minn	863	45	10.43	.....	.....	831	42	[1] 42	10.11
Fergus Falls, Minn	796	64.5	16.21	61.5	15.45	981	64	61	12.44
Bemidji, Minn	983	72.5	14.75	69	14.04	1,046	70.5	67	12.81
Fargo, N. Dak	794	70	17.63	62	15.62	990	70	62	12.53
Grand Forks, N. Dak	872	74.5	17.09	72	16.51	1,068	75.5	70	13.11
Jamestown, N. Dak	766	70	18.27	62	16.19	1,157	81	76	13.14
Minot, N. Dak	782	70	18.03	62	15.86	1,215	92	81	13.33
Bismarck, N. Dak	776	70	18.05	62	15.98	1,260	94.5	82	13.02
Dickinson, N. Dak	661	70	21.18	62	18.76	1,364	107	88	12.90
Average [2]	804	70.2	17.65	64.1	16.05	1,135	81.8	73.4	12.91

[1] No change in rate previously effective.
[2] Averages computed omitting data relating to St. Paul and Willmar, Minn., to which suspended rates do not apply.

136 ORDER

At a session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 30th day of March, A. D. 1929

Investigation and Suspension Docket No. 3148

Petroleum and its Products from Points in Wyoming to South Dakota, North Dakota, Iowa, Minnesota, and Nebraska

It appearing, That by orders dated August 14 and August 23, 1928, the commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices stated in the schedules enumerated and described in said orders, and suspended the operation of said schedules until March 15 and March 28, 1929, respectively, and that respondents have subsequently voluntarily deferred the effective date of said schedules until May 15, 1929;

It further appearing, That a full investigation of the matters and things involved has been had, and that said division, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the respondents herein be, and they are hereby, notified and required to cancel said schedules, on or before May 14, 1929, upon notice to this commission and to the general public by not less than one day's filing and posting in the manner prescribed in section 6 of the interstate commerce act, and that this proceeding be discontinued.

By the commission, division 5.

[SEAL.] GEORGE B. McGINTY,
Secretary.

137 *Exhibit D to petition*

Northern Pacific Railway Company, Law Department

ST. PAUL, MINNESOTA, *December 21, 1929.*

Subject: International Oil Co., et al., v. A. & S. Ry. Co., et al.

ICC Dkt. 17304. (1231 ICC)

Hon. ULYSSES BUTLER,
Chief Examiner, Interstate Commerce Commission,
Washington, D. C.

DEAR SIR: Further hearing in the above-entitled proceeding is now set for January 13, at Fargo before Examiner Prout. The case involves the reasonableness under section 1 of the interstate commerce act of the rates on gasoline and refined petroleum oils from the mid-continent fields to destinations in western Minnesota and North Dakota. The rates now in effect to these destinations are those prescribed by the commission in this case pursuant to the second supple-

mental report of the commission in Midcontinent Oil Rates, 1925, 139 I. C. C. 605. Following the establishment of these rates the carriers proposed reductions in the oil rates from the Wyoming oil fields to the same destinations to continue a rate parity previously in effect. These proposed reductions were suspended by the Commission in I. & S. Docket 3148 and were finally required to be cancelled as the result of the commission's decision in I. & S. Docket 3148 issued March 30, 1929. There are now pending before the commis-
138 sion two complaints attacking the rates on petroleum and its products from Wyoming to destinations in North Dakota and western Minnesota upon the ground that they are unreasonable in violation of section 1, and unduly prejudicial to producers in the Wyoming oil fields and unduly preferential of producers located in the midcontinent fields. These complaints are on file with the commission under its Dockets 22714, Standard Oil Company (Indiana) v. C. & N. W. Ry. Co., et al., and 22733, Public Service Commission of Wyoming v. C. & N. W. Ry. Co. The issues in Docket 17304 are thus closely related to the issues before the commission in Dockets 22714 and 22733 and the question of the levels of the rates to western Minnesota and North Dakota from the Wyoming fields and from the midcontinent oil field, and the relationships of these rates to each other are matters which should not be dealt with piecemeal on separate records. I am accordingly preparing a petition which will be filed with the commission at the earliest possible moment asking that Docket 17304 be consolidated with Dockets 22714 and 22733 and heard with those cases upon a common record. Since Dockets 22714 and 22733 have not yet been set for hearing and the date now set for hearing of Docket 17304 is so near at hand as to prevent adequate consideration to be given by the carriers to the questions of rate levels and relationships involved in these three cases, I am writing
139 this letter to ask you to cancel the hearing now set for January 13, 1930, in Docket 17304 and to postpone indefinitely the further hearing in that case.

Yours truly,

M. L. COUNTRYMAN, JR.,
Assistant General Counsel.

MLC:s

cc—Mr. Karl Knox Gartner, Smith Bldg., 815 15th St., Washington, D. C.
Mr. N. R. Williams, Commercial Club, Fargo, N. D.
Mr. H. L. McReynolds, C/o White Eagle Oil & Refg. Co., Federal Reserve Bank Bldg., Kansas City, Mo.
Mr. A. F. Cleveland, V. P., C&NW Ry. Co., Chicago, Ill.
Mr. J. N. Davis, Commerce Counsel, CMStP&P RR. Co., Chicago, Ill.
Mr. A. H. Lossow, Commerce Counsel, Soo Line Ry. Co., Minneapolis, Minn.
Mr. J. P. Plunkett, Gen. Atty., Great Northern Ry. Co., St. Paul, Minn.

140 *Exhibit E to petition*

17355

Interstate Commerce Commission

No. 17304 [1]

International Oil Company et al. v. Abilene Southern Railway Company et al.

Submitted October 9, 1930. Decided December 1, 1931

Finding in former report, 139 I. C. C. 605, that the rates on gasoline and other petroleum products from the midcontinent field to points in North Dakota and northwestern Minnesota for the future would be unreasonable, modified upon further hearing. Reasonable rates prescribed and reparation awarded in certain instances.

Karl Knox Gartner for complainants in No. 17304; and G. M. Springer and V. P. Cadieux for complainants in No. 21737.

C. W. McDonnell, Fay Harding, Ben C. Larkin, E. M. Hendricks, and F. P. Aughnay for Board of Railroad Commissioners of North Dakota; Herman L. Bode and D. L. Kelley for Board of Railroad Commissioners of South Dakota; Neal E. Williams for Chamber of Commerce of Fargo, N. Dak.; T. A. Durrant for Greater Grand Forks Traffic Association; Paul E. Hadlick for North Dakota Petroleum Association and Northwest Petroleum Association; A. F. Winn and R. D. Pearce for Kansas Oil Traffic Committee; S. B. Meyers, L. D. Summerwell, and H. D. Driscoll for Independent Oil & Gas Company; Edgar E. Clark, Wilbur LaRoe, jr., Frederick E. Brown, and W. E. McGriff for Standard Oil Company (Indiana); H. W. Roe, and L. W. Witte for Cushing Refining & Gasoline Company, Barnsdall Refineries, Incorporated, Empire Oil & Refining Company, Mid-Continent Petroleum Corporation, Tidal Refining Company, Transcontinental Oil Company, and Champlin Refining Company; E. W. Sieboldt, A. C. Hultgren, and J. R. Van Slyke for Shell Petroleum Corporation; B. J. Burchett for Home Oil Company; and H. W. Robertson for Sinclair Refining Company, interveners.

J. P. Plunkett, Conrad Olson, P. F. Gault, J. N. Davis, A. H. Lossow, R. J. Hagman, D. F. Lyons, M. L. Countryman, jr., and E. F. Rice for defendants.

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[1] This report also embraces No. 21737, Dacotah Oil Company et al. v. Atchison, Topeka & Santa Fe Railway Company et al.

McMANAMY, Commissioner:

These cases were heard and submitted separately, but they are closely related and will be disposed of in the same report. Exceptions were filed to the report proposed by the examiner on further hearing in No. 17304, and the parties were heard in oral argument. Our conclusions differ from those recommended by the examiners in both cases.

In the second supplemental report in Midcontinent Oil Rates, 1925, 139 I. C. C. 605, herein called the Midcontinent case of 1925, we found the rates on gasoline and other petroleum products taking the same rates from Texas, Oklahoma, Kansas, and Missouri, herein called the midcontinent field, to points in North Dakota and in Minnesota north and west of the line of the Great Northern from Duluth, Minn., to Pipestone, Minn., unreasonable and unduly prejudicial and prescribed maximum reasonable rates for the future to representative destinations, effective June 14, 1928. We also stated that defendants should adjust rates to other destinations "in proper relationship thereto having due regard for differences in distances." Reparation, which was asked by complainants in No. 17304, the title case herein, was denied on the ground that the reductions required were part of the same general readjustment and of the same nature as those which had been required in the rates to Sioux City, Iowa, Sioux Falls, S. Dak., and St. Paul, Minn., the principal gateways to the destination territory, in the original report in the Midcontinent case of 1925 112 I. C. C. 421. Upon petition of complainants in the title case and intervener, White Eagle Oil & Refining Company, it was reopened for rehearing. The Board of Railroad Commissioners of the State of North Dakota, the Chamber of Commerce of Fargo, N. Dak., the Greater Grand Forks Traffic Association, and producers of petroleum products in the midcontinent field intervened in support of the complaint. The Standard Oil Company (Indiana) also intervened taking the position that the relationship of the rates assailed to those from Casper, Wyo., should be considered in this proceeding. That relationship is not brought in issue by the complaints, however, and will not be considered. The Board of Railroad Commissioners of the State of South Dakota intervened after the hearing for the purpose of filing exceptions to the proposed report and participating in the oral argument. Unless otherwise indicated, the complainants hereinafter referred to are those in the title case.

Complainants in No. 21737 distribute petroluem products at Jamestown, Buffalo, Valley City, and Cleveland, N. Dak. L. A. Arbogast, jr. and J. R. Stewart are copartners trading under the name of the Dacotah Oil Company. The legal status of other com-
142 plainants in No. 21737 is not shown. By complaint originally filed November 12, 1928, as amended, they allege that the rates on petroleum products, in carloads, from points in Arkansas, Kansas, Oklahoma, and Texas to the above-named points were and are un-

reasonable. Reasonable rates for the future and reparation are sought The Board of Railroad Commissioners of the State of North Dakota intervened on behalf of complainants in this case. Unless otherwise stated rates herein referred to are those on gasoline and other petroleum products taking the same rates from midcontinent Group 3, the basing group. Rates from Group 1, Kansas City, Mo.-Kans., are uniformly 7 cents less, and those from the other origin groups are also differentially related to Group 3. Rates will be stated in amounts per 100 pounds.

Complainants in No. 21737 contend that the rates assailed should be determined by the distances over the shortest workable routes and that they should be on the same basis as those prescribed to Fargo, Aberdeen, S. Dak., and other key points in Minnesota, and North and South Dakota. They ask for a rate of 59 cents to Jamestown with rates to other destinations fairly related thereto. They assert that in prescribing rates to the 37 key points named in Appendixes A and C of our former report short-line distances were used to all points except Jamestown, Bismarck, and Dickinson, N. Dak. It is not urged that we erred in that proceeding in prescribing a rate of 76 cents to Jamestown but that the evidence with respect to that point and related points was incomplete. The rates to the points involved in No. 21737 will be given further consideration upon the broader record on further hearing in the title case.

A short description of the rates assailed prior to June 14, 1928, appears in the second supplemental report in the Midcontinent case of 1925, which will hereinafter be referred to as our former report. Because of their relationship to the rates to the gateways the recent history of the latter will be stated briefly. In Midcontinent Oil Rates, 36 I. C. C. 109, hereinafter referred to as the Midcontinent case of 1915, we found, among other things, that the rates on petroleum products from the Oklahoma group in the midcontinent field to St. Paul and Sioux City were unreasonable and prescribed rates of 31 and 28 cents, respectively. As a result of the general rate changes these rates became 43 and 39.5 cents on July 1, 1922. In our original report in the Midcontinent case of 1925, we found that the rates from the midcontinent field to western trunk-line and related territory therein assailed were as a whole not in excess of reasonable maximum rates but that such rates were unduly prejudicial and preferential and prescribed, among others, rates of 42 and 36 cents as reasonable and nonprejudicial rates from Group
143 3 to St. Paul and Sioux City, respectively. These rates, which became effective July 20, 1927, are the present rates. The rates established to St. Paul following the decision in the cases cited were also established to numerous intermediate points, including all points in Minnesota on the line of the Great Northern from Pipestone through Willmar to St. Paul, which forms part of a circuitous route to the Twin Cities.

In our former report we also prescribed maximum reasonable rates from the midcontinental field to a number of points in adjacent

territory in South Dakota reached by the lines of two of the principal defendants operating in the destination territory. The latter are relatively higher, particularly those to points west of the Missouri River, than the rates to Sioux City, Willmar, St. Paul, and the other gateways. In Appendix A hereto the rates and short-line distances to those gateways and to representative points in the destination territory are compared with the rates prescribed to the South Dakota points, using the first-class rates under the southwestern scale as a basis of comparison. The percentages of the scale rates indicate the respective levels of the rates on petroleum. The points in italics are representative of those to which defendants published rates in purported compliance with our instruction in the former report to adjust the rates to other points in proper relationship with those specifically prescribed to the key points. These rates became effective June 14, 1928.

Kansas City is the gateway for the oil traffic from the Southwest to the destinations here considered. Beyond that point the principal routes which move the bulk of the traffic are through St. Paul; but except to relatively few points in eastern Minnesota, the shortest routes, many of which are open routes, are through Aberdeen or Willmar. To most points in North Dakota west of and including Devils Lake and Jamestown and to some points east thereof the shortest routes are over the Chicago, Milwaukee, St. Paul & Pacific [2] through Sioux City and Aberdeen to Edgeley, N. Dak., where that carrier connects with the Midland Continental, which in turn connects with the Northern Pacific at Jamestown and the Minneapolis, St. Paul & Sault Ste. Marie [2] at Wimbledon, N. Dak. To eastern North Dakota and western Minnesota the shortest routes are generally through Sioux City and over the line of the Great Northern above described through Willmar or the junctions with the other northern carriers. The short routes are also the tariff routes to many destinations.

Complainants contend that the rates which become effective June 14, 1928, were and are unjustifiably high, particularly as compared with the rates prescribed from the same origins to points in
144 South Dakota and to St. Paul, Paynesville, St. Cloud, Willmar, and Granite Falls, Minn., the gateways immediately adjoining the destination territory via which the traffic moves; that the method adopted in prescribing rates to the destinations considered is objectionable in that we dealt specifically with the rates to relatively few points in an extensive territory and that the rates established by carriers to other points are improperly graded; and that with respect to rates in the past the evidence indicating that they would be unreasonable for the future is equally convincing that they were unreasonable to the same extent in the past. The relationship of the origin groups is not attacked and complainants and interveners object to any disturbance of that relationship in this proceeding.

[2] The Chicago, Milwaukee, St. Paul & Pacific will be referred to hereinafter as the Milwaukee; and the Minneapolis, St. Paul & Sault Ste. Marie as the Soo Line.

Complainants point out that we stated in the Midcontinent case of 1915, supra, that we expected defendants therein to line up rates to intermediate or related points with those found reasonable to particular points or groups of points; that following that decision the carriers continued to apply the fifth-class rates beyond the gateways to the destination territory here considered; and that the complaint in the title case was filed to require the carriers to extend to that territory a basis of reasonable joint rates related to that prescribed to the adjoining St. Paul territory. They show that although some reductions were made in purported compliance with our finding in the former report rates to 106 of the 836 destinations here considered were increased. There are also departures from the fourth section in the present rates, some of which are on the shortest tariff routes. The following situations are instanced to indicate the apparent lack of proper gradation in the present rates. From Lemmon, S. Dak., to which point we prescribed a rate of 70 cents, to Montline, N. Dak., a distance of less than 100 miles over the main line of the Milwaukee, the rates are graded up to $1.12 at the latter point. The 80-cent rate prescribed to New England, N. Dak., is blanketed to all intermediate points on the New England branch of that carrier in North Dakota over a distance of 115 miles, resulting in rates 10 cents greater than to Lemmon for distances averaging about the same as to that point.

Certain interveners direct particular attention to the rapid gradation in the rates prescribed to North Dakota and refer to rates prescribed by us on a number of commodities to and from points in the State which grade less rapidly. They point out that the rate from Group 3 to Fargo, 990 miles, is 62 cents while the rate to Grand Forks, 1,068 miles, is 70 cents, or an increase of 8 cents for a difference in distance of 78 miles. In Leonard, Crossett & Riley v. Aransas H. T. Ry., 155 I. C. C. 89, rates of 65 cents and 68 cents were prescribed on potatoes from Fargo and Grand Forks, respectively, to Enid, Okla., and a similar spread was observed in the
145 rates prescribed to other destinations in the Southwest. It does not follow, however, that the origin relationship prescribed on potatoes must be followed in arriving at a proper destination relationship on petroleum, which is affected by entirely different conditions.

The rates sought for the future are constructed by adding to the present rate of 42 cents to Willmar the amount of the spread in the fifth-class rates under the southwestern scale, determined by applying that scale to the short-line distances to Willmar and to the destinations beyond via that gateway. Such rates would yield ton-mile earnings averaging slightly greater than those to Willmar. Reparation on past shipments is sought to the basis of the rate to St. Paul plus the spread in the fifth-class rates under the southwestern scale determined by the distances to and via that gateway. The latter basis is slightly higher than that sought for the future.

Complainants show that the rates assailed yield earnings per car-mile which are in some instances 50 per cent higher than those under

the rates to Duluth, Willmar, and St. Paul and that they are also much higher than the rates for comparable distances from points in midcontinent Group 3, Casper, and other points to destinations in other portions of western trunk-line territory. For example the rate from Group 3 to Wausau, Wis., is 46 cents as compared with a rate of 62 cents prescribed to Fargo and rates of 65 cents to Detroit Lakes, Minn., and 79.5 cents to Linton, N. Dak.

The rates assailed are also compared with rates which would result under various bases of readjustment. Some of these were considered in the former report. Those here submitted are determined generally by the present rate to Willmar or other gateway through which the shortest possible distance is computed, plus the spread in the fifth-class rates under the southwestern or Fargo scale for the distances beyond the gateway, or by applying to the southwestern scale of class rates the average percentage relationship which the rates prescribed in the original report to 17 cities on and east of the Missouri River and south of the destination territory here considered bear to the same class rates. Aside from the fact that refined oils are rated fifth class in western classification and that rates to the destination territory were formerly made by combination, using the full fifth-class local rates as factors beyond the gateways, the use of the spreads in the fifth-class rates has little support of record.

As indicated in the original report in the Midcontinent case of 1925, the rates prescribed to St. Paul and other so-called key points in that report were intended primarily to effect proper relationships which would remove the undue preference and prejudice therein 146 found to exist, and in White Eagle Oil & Refining Co. v. Atchison, T. & S. F. Ry. Co., 156 I. C. C. 51, it was stated:

In all of the cases dealing with rates from the midcontinent field and from Wyoming points to western trunk-line points we have consistently stated that the primary purpose was the establishment of an equitable relationship rather than the establishment of maximum reasonable rates, and denied reparation.

Defendants introduced comparisons based upon the relationships of the rates assailed and those from Casper to representative points in the destination territory on the Soo Line to the first-class rates in scales 3 and 4, respectively, proposed by western trunk-line carriers in Western Trunk-Line Class Rates, 164 I. C. C. 1. These are not determinative of the issue in the absence of a showing that the scales used for comparative purposes accurately reflect the difference in transportation conditions. Defendants also compare the rates from Group 3 to representative destinations with constructive rates based on the present rates to the gateways of Sioux City, St. Paul, and Willmar plus 75 per cent of the fifth-class rates in the proposed scale 4 for the short-line distances beyond the gateways. The lowest rates so constructed are made by the use of the Willmar rate and distances beyond, and they would be slightly higher than the present rates. For example, the present rate from Group 3 to Valley City, 1,014

miles, is 74 cents as compared with rates of 76, 82.5, and 84 cents constructed over Willmar, St. Paul, and Sioux City, respectively.

Defendants contend that the rates assailed should not be measured by the rates prescribed to South Dakota because the traffic here considered does not normally move through that State; because the rates thereto bear no necessary relation to those to North Dakota; and because they are unduly low. The first two grounds relied upon were not recognized in recent decisions in which we prescribed a uniform level of rates on traffic from the Southwest to the eastern sections of both States. Nor does defendants' comparison of the rate to Mitchell, S. Dak., with rates from Tulsa, Okla., to points in Indiana prescribed in Indiana State Chamber of Commerce v. A., T. & S. F. Ry. Co., 96 I. C. C. 485, 112 I. C. C. 481, lend support to the latter conclusion. The rate to Mitchell is on a somewhat lower level than the average of the rates to South Dakota, and distances from Tulsa to the Indiana destinations are not representative of those from all producing points in Group 3.

Complainants and defendants introduced exhibits showing relative traffic density and other statistical data bearing upon transportation conditions in the territory between Kansas City and St. Paul through which the traffic generally moves, in the destination territory here considered, and in South Dakota. Complainants contend that
147 their comparisons fully sustain the reasonableness of the rates which they seek, both for the future and for the past, and that they justify a level of rates in western North Dakota no higher than in the eastern portion of that State. Defendants stress the operating difficulties encountered by the northern lines during the winter months and the character of the service which they render in the distribution of the traffic. In the latter connection the Northern Pacific shows that of 2,465 cars delivered by it in the first eight months of 1929, 45 per cent were destined to branch-line points. On the other hand, by far the heaviest movement takes place in the summer and early fall months, and the lines performing the service to the Twin Cities handle the traffic in train loads to that point.

RATES FOR THE FUTURE

The record on further hearing demonstrates the necessity of a further revision of the rates assailed to bring about a reasonable and consistent adjustment. The present rates grade up too rapidly beyond the gateways on the eastern border of the destination territory and as the State line is crossed from South Dakota into North Dakota: the key-point rates have frequently been blanketed back for long distances, resulting in abrupt jumps in the rates between adjoining stations; there are numerous fourth-section departures and other inconsistencies such as higher rates to Jamestown and Bismark than to Devils Lake and Minot, N. Dak.; the rates to North Dakota especially are on too high a level compared with the rates prescribed

to South Dakota; and those from Kansas City to North Dakota are generally higher than the Wyoming-Montana scale recently prescribed in Rates on Petroleum and its Products in Montana, 176 I. C. C. 707.

The proposed report on further hearing in the title case recommended rates based on 22.5 per cent of first class under the southwestern scale with differentials for hauls west of the Missouri River as far north as Washburn, N. Dak., thence the Soo Line to Max, N. Dak., and a line drawn from there through Minot and Lansford, N. Dak., to the Canadian boundary. The application of this basis would create an abrupt rise from the rates to the gateways on the eastern border of the destination territory. For example, the rates would increase from 42 cents at Willmar to 53 cents at the next station, Pennock, Minn., 8 miles beyond. Such an adjustment would not only cut the rates drastically throughout North Dakota but it would make them lower than those to less-distant points in South Dakota which were prescribed in our former report and are not here in issue.

148 The record indicates that the rates to the gateways were made with relation to those to points farther east such as Chicago, Ill., which are affected by competitive conditions which do not exist in the destination territory under consideration. Under these circumstances and considering the effect on carriers' revenues, we would not be warranted in requiring an extension of the level of rates at the gateways throughout this destination terrtory. Moreover, it is apparent that the application of any uniform percentage of class rates to this traffic would have one or more of the following results: (1) Increases in the rates to the gateways and points east thereof which were prescribed in the Midcontinent case of 1925 and are not here in issue; (2) a very abrupt rise in the rates to points immediately beyond the gateways; and (3) drastic reductions to points not only throughout this destination territory but also in South Dakota and perhaps Nebraska.

We are forced to the conclusion that the situation requires the prescription of specific rates without any special relation to the class rates. Appendix B hereto shows the rates from Group 3 to the 836 destinations involved, the distances over the shortest workable routes as shown in complainants' exhibits, the first-class rates for like distances under the southwestern scale, and the percentage relation of the petroleum rates to such class rates. The southwestern scale is used simply as a convenient yardstick and not on the assumption that it would be proper for application to all points in the destination territory. This appendix also shows the rates proposed by the examiner and those herein prescribed for the future. It will be observed that the latter are graded upward from the gateways and gradually become a larger percentage of the first-class rates under the southwestern scale. The proposed rate from Group 3

to Fargo is 22.5 per cent, which is the same as the average under the rates prescribed to points in eastern South Dakota; that proposed to Jamestown, 980 miles, is 25 per cent and the same as that previously prescribed to Mobridge, S. Dak., 974 miles; and that proposed to Bismarck, 1,055 miles, is 26.5 per cent and the same as that previously prescribed to Lemmon, S. Dak., 1,073 miles. These rates will not only be in harmony with those previously prescribed to South Dakota, but considering the respective territories through which the traffic moves, also in line with those recently prescribed from Wyoming points to Montana points in Rates on Petroleum and its Products in Montana, supra.

In prescribing these rates we have taken into consideration the shortest possible routes, including that through Ellendale and Edgeley, N. Dak., as well as the routes over which the bulk of the traffic moves via the Twin Cities. The adjustment is intended to
149 eliminate fourth-section departures over all reasonable and customary routes, but if fourth-section relief is necessary applications therefor will be given consideration on their merits.

REPARATION

The Midcontinent case of 1915 did not consider the rates to points in the territory here under consideration, and the admonition therein to revise the rates to intermediate or related points can hardly be regarded as applicable to the rates to points in this territory. We have repeatedly held that as applied to past shipments the rates in effect prior to the readjustment of June 14, 1928, were not unreasonable to the extent they exceeded the rates established on that date pursuant to the Midcontinent case of 1925. See cases cited in Legel Oil & Gas Co. v. Chicago & N. W. Ry. Co., 161 I. C. C. 599.

The rates prescribed in our former report must be regarded as reasonable maxima from the time of their establishment to the effective date of the order to be issued in connection with this report. There are certain instances, however, where the carriers failed to comply with our instruction to revise the rates to other points in proper relationship with those prescribed to the key points. For example, prior to March 15, 1930, the rate of 56 cents from Group 3 to Benson, Minn., which is directly intermediate on the short route to Morris, Minn., was higher than the rate of 54 cents prescribed to the latter point. Apparently this departure from the fourth section was due to a mistake in tariff publication, and it was removed by reducing the Benson rate to 54 cents on March 15, 1930. The rate to Morris is also lower than to intermediate points on the Northern Pacific's branch from Little Falls, Minn., but that is a circuitous route. Another mistake in tariff publication was the establishment of a rate of 54 cents to Graceville, Minn., and higher rates to intermediate points on the Great Northern's branch from Morris, which is the short route. This departure from the fourth section was removed by increasing the Graceville rate to 58 cents on March 15, 1930.

There are other departures from the long-and-short-haul rule such as at points on the Northern Pacific intermediate to Fargo, but the distances over the Northern Pacific's usual route to these points is substantially greater than the short route to Fargo. In our former report a higher rate was prescribed to one of these points, Wadena, Minn., than to Fargo. The rates to Fertile, Minn., on the Northern Pacific's line to Grand Forks, are slightly higher than those prescribed to the latter point. While the Northern Pacific does not have the short line to Grand Forks, the distance to Fertile is about the same as that over the short route to Grand Forks, and there does not appear to be any justification for higher rates to Fertile.

150 The rates to certain points on the Northern Pacific intermediate to New Rockford and Leeds, N. Dak., exceed those to the latter points, and the distances to the intermediate points appear to be less than the short-route distances to the farther distant points. A similar situation exists at certain points on the Northern Pacific intermediate to Hannaford, N. Dak., but the present rate to these points is the same as that prescribed to Jamestown, which is intermediate to them on the short route.

The rates to Portal, N. Dak., and certain intermediate points on the Soo Line are considerably higher than those prescribed for comparable distances to Antler, Dickinson, and Williston, N. Dak., and also higher than the rates to near-by points such as Northgate, Lignite, and Crosby, N. Dak. The rates to points on the main line of the Milwaukee across the southwest corner of North Dakota range from 82 cents to $1.12 for distances of 1,078 to 1,170 miles. These rates are very much higher than those prescribed of 70 cents to Lemmon, 1,073 miles; 80 cents to New England, 1,138 miles; and 88 cents to Dickinson, 1,170 miles.

In general, the carriers appear to have blanketed the key-point rates back so as to create larger destination groups than under the adjustment herein prescribed for the future, but it can not be said that the rates so established are clearly contrary to our previous findings except in the instances hereinbefore mentioned and indicated in column H of Appendix B.

FINDINGS

Upon the whole record now before us, we find that the rates assailed prior to June 14, 1928, were not unreasonable; that those applicable on and after that date until the effective date of our present order for the future were unreasonable only in the instances and to the extent they exceeded the rates shown from Group 3 in column H of Appendix B hereto, plus or minus the differentials from other origin groups applicable to Willmar and St. Paul, Minn.; and that on and after the effective date of our order for the future, the rates assailed will be unreasonable to the extent they exceed or may exceed those shown from Group 3 in column F of Appendix B, plus or minus said differentials from the other origin groups. Our previous findings are modified accordingly.

Defendants in the title case stipulated that if reparation should be awarded proof of paying and bearing the charges might be made by affidavit in connection with the Rule V statements. Shipments are barred which were delivered more than two years prior to the filing of the respective complaints, the amendments thereto as to additional complainants, and the petitions of intervention as to interveners.

151 We further find that complainants and interveners who asked for reparation and made shipments during the statutory period on which they paid or bore the charges at rates herein found unreasonable were damaged to the extent such charges exceed those that would have accrued at the rates herein found unreasonable; and that they are entitled to reparation with interest. Those complainants and interveners should comply with Rule V of the Rules of Practice, accompanying their statements with proof in affidavit form that they paid or bore the charges, and may include shipments made pendente lite.

An appropriate order for the future will be entered.

MAHAFFIE, Commissioner, dissenting:

The majority report shows that we have previously considered the rates on these commodities from and to the territories here considered; also that we prescribed maximum key rates and admonished the carriers properly to align their rates with the key rates prescribed. It is further shown that reparation was denied in the title case on the ground that the reductions required were part of a general readjustment. The carriers so adjusted their rates in relation to the key rates prescribed as to afford the shippers the same rates over a considerable area. The principal issue here, as I view it, is one of the relationship in the rates resulting from our previous decisions. The adjustment here required is based very largely upon our previous findings in the Midcontinent Cases, which we have repeatedly stated required rates below reasonable maxima. Notwithstanding the fact that many of the rates assailed were published in compliance with our orders, the majority now use the southwestern class rate revision for comparative purposes to arrive at a conclusion that rates previously prescribed were unreasonable. The record is convincing that the rates assailed in the territory considered should be more properly aligned. That should be done without sacrifice of carrier revenue. Revision of rate adjustments upon such precedents as the majority here use and the condemnation of rates previously prescribed as reasonable usually result, as they result here, in rates so low as to make unwarranted reductions in carrier revenue.

Commissioners Porter and Tate dissent.

Commissioner Aitchison did not participate in the disposition of these cases.

APPENDIX A

Rates and average distances from Group 3 to representative destinations

	Distance [1]	Rate	Relation to first-class rates under southwestern scale
	Miles	*Cents*	*Per cent*
Sioux City, Iowa	610	36	18.5
Sioux Falls, S. Dak	761	40	19
St. Paul, Minn	822	42	18.5
Willmar, Minn	831	42	18
Average			18.5
South Dakota (east):[2]			
Yankton	672	41	20
Mitchell	747	45	20.5
Huron	797	48	21
Chamberlain	814	52	22.5
Watertown	828	50	21.5
Aberdeen	875	55	23
Pierre	916	59	24.5
Roscoe	917	59	24.5
Mobridge	974	63	25
Average			22.5
South Dakota (west):[3]			
Winner	807	54	23.5
Murdo	889	58	24
Midland	967	63	25
Rapid City	1,033	68	26
Isabel	1,036	70	27
Deadwood	1,064	70	26.5
Lemmon	1,073	70	26.5
Belle Fourche	1,087	72	27
Faith	1,106	75	28
Average			26

	Short-line distance	Present rate	Relation to first-class rates under southwestern scale	Rate sought
Minnesota:	*Miles*	*Cents*	*Per cent*	*Cents*
Appleton	883	54	22.5	44
Morris	886	54	22.5	44
Sauk Center	918	59	24.5	45
Brainerd	952	61	24.5	48
Fergus Falls	968	61	24.5	48
Wadena	961	62.5	25	48
Detroit Lakes	988	65	25.5	49
Glyndon	998	67	26.5	49
Grand Rapids	1,029	[4] 67.5	26	64
Hibbing	1,031	59	22.5	54
Bemidji	1,047	67	26	52
Thief River Falls	1,081	74	28	54
Average			25	
North Dakota (east):[3]				
Oakes	929	73	29.5	50
Wahpeton	944	60	24.5	47
Jamestown	980	76	30	53
Fargo	990	62	24.5	49
Valley City	1,014	74	29	52
Hannaford	1,030	72	27.5	53
Cooperstown	1,040	80	31	53
Bismarck	1,055	82	31	58

[1] As shown in Appendixes A and C in former report.

[2] These points are on and east of the line of the Missouri River in South Dakota, and in North Dakota to Washburn, N. Dak., thence on the line of the Minneapolis, St. Paul & Sault Ste. Marie to Max, N. Dak., and thence north through Minot and Lansford, N. Dak., to the Canadian border.

[3] These points are west of the line described above.

[4] Rate of 70 cents prescribed in former report.

[5] These points are on and east of the line of the Missouri River in South Dakota and in North Dakota to Washburn, N. Dak., thence the line of the Minneapolis, St. Paul & Sault Ste. Marie to Max, N. Dak., and thence north through Minot and Lansford, N. Dak., to the Canadian border.

Rates and average distances from Group 3 to representative destinations—Continued

	Short-line distance	Present rate	Relation to first-class rates under southwestern scale	Rate sought
North Dakota (east)—Continued.	*Miles*	*Cents*	*Per cent*	*Cents*
Grand Forks	1,068	70	26.5	52
Grafton	1,105	78	29	58
Rugby	1,115	77	28.5	60
Devils Lake	1,118	74	27.5	56
Bisbee	1,128	82	30	58
Minot	1,141	81	30	61
Lansford	1,190	90	32.5	64
Average			28.5	
North Dakota (west):[6]				
New England	1,138	80	29.5	64
Bowman	1,136	103.5	38	64
Walhalla	1,153	80	29	58
Dickinson	1,170	88	32	65
Antler	1,195	88	31.5	64
Bowbells	1,203	91	32.5	65
Beach	1,235	94	33	69
Williston	1,262	88	30.5	66
Crosby	1,252	93	32	68
Average			32	

[6] These points are west of the line described above.

APPENDIX B

Comparison of rates on refined petroleum from Group 3

Destinations on—	(A) Short-route distance [1]	(B) Present rate	(C) First-class rates under Southwestern scale [2]	(D) Relation of column B to column C [3]	(E) Examiner's proposed rate	(F) Rate prescribed for future	(G) Relation of column F to column C [4]	(H) Reparation rate
Great Northern								
Willmar-Fargo line:	*Miles*	*Cents*		*Per cent*	*Cents*	*Cents*	*Per cent*	*Cents*
Willmar, Minn.[5]	831	42	42.34	18				
Pennock, Minn. to—	838	48.5	2.34	20.5	53	47	20	38
Benson, Minn.	862	[6] 56	2.37	23.5				
Clontarf, Minn. to—	867	54	2.37	23	53	50	21	
Morris, Minn.	886	[7] 54	2.40	22.5	54			
Donnelly, Minn. to—	895	60	2.40	25	54	53	22	
Tintah, Minn.	921	60	2.43	24.5	55			
Campbell, Minn. to—	929	[7] 60	2.47	24.5	56	55	22.5	
Wahpeton, N. Dak.	944							
Kent, Minn. to—	958	62	2.50	25	56	57	22.5	
Fargo, N. Dak.	960	[7] 62	2.53	24.5	57			

[1] Average distances via "short workable routes" as shown on complainants' Exhibit 7-A.
[2] First-class rates under southwestern scale for distances shown in column A without the addition of any differentials.
[3] Fractions of less than one-quarter omitted, those of one-quarter to but not including three-quarters made one-half, and those of three-quarters or more increased to the next whole figure.
[4] Based on rates to farthest distant point in each group. See also note 3.
[5] Points not here in issue shown for comparison.
[6] Rate to Benson, Minn., reduced from 56 to 54 cents on March 15, 1930.
[7] Rates prescribed in Midcontinent Oil Rates, 1925, 139 I. C. C. 605.

Comparison of rates on refined petroleum from Group 3—Continued

Destinations on—	(A) Short-route distance	(B) Present rate	(C) First-class rates under Southwestern scale	(D) Relation of column B to column C	(E) Examiner's proposed rate	(F) Rate prescribed for future	(G)[1] Relation of column F to column C	(H) Reparation rate
***Great Northern*—Continued**								
449 Branches from Willmar-Fargo line:	*Miles*	*Cents*		*Per cent*	*Cents*	*Cents*	*Per Cent*	*Cents*
Danvers, Minn. to—	869	54	$2.37	23	53	50	20.5	
Nassau, Minn.	908	54	2.43	22	55			
Alberta, Minn. to—	894	58	2.40	24	54	53	22	54
Johnson, Minn.	906	58	2.43	24	55			
Graceville, Minn. to—	913	[2] 54	2.43	22	55	53	21.5	
Browns Valley, Minn.	933	60	2.47	24.5	56			
Erdahl, Minn.	947	60	2.47	24.5	56	53	21.5	
Kutzer, Minn.	934	60	2.47	24.5	56	55	22.5	
Fairmount, N. Dak.	937							
Hankinson, N. Dak. to—	951	63	2.50	25	56	58	23	
Rutland, N. Dak.	980	63	2.53	25	57			
Straubville, N. Dak. to—	999	71	2.53	28	57	58	23	
Ellendale, N. Dak.	913	71	2.43	29	55			
Forbes, N. Dak.	1,043	74	2.60	28.5	59	60	23	
Havana, N. Dak.	990	63	2.53	25	57	58	23	
St. Cloud-Fargo line: St. Cloud, Minn.[3]	880	47	2.40	19.5				
St. Joseph, Minn. to—	896	53.5	2.40	22.5	54	50	20.5	
Sauk Center, Minn.	918	59	2.43	24.5	55			
West Union, Minn. to—	926	60	2.47	24.5	56	53	21	
Evansville, Minn.	954	60	2.50	24				
Melby, Minn. to—	959	61	2.50	24.5	56	55	22	
Fergus Falls, Minn.	968	[2] 61						
Rothsay, Minn. to—	999	62	2.53	24.5	57	57	22.5	
Sabin, Minn.	998							
Branches north of St. Cloud-Fargo line: Long Prairie, Minn. to—	936	62.5	2.47	25.5	56	55	22	
Wadena, Minn.	966	62.5	2.50	25				
Sebeka, Minn. to—	975	67	2.50	27	56	57	22.5	
Park Rapids, Minn.	990	67	2.53	26.5	57			
Dorset, Minn. to—	1,003	67	2.56	26	58	60	23.5	
Walker, Minn.	1,015							
Elizabeth, Minn. to—	990	63	2.53	25	57	57	22.5	
Pelican Rapids, Minn.	1,004	63	2.56	24.5	58			
Duluth-Grand Forks line: Duluth, Minn.[3]	972	47	2.50	19				
Brookston, Minn.	975	56	2.50	22.5	56	54	21.5	
Floodwood, Minn.	992	62.5	2.53	24.5	57	57	22.5	
Swan River, Minn.	1,009	63	2.56	24.5	58			

[3] Points not here in issue shown for comparison.
[1] Rates prescribed in Midcontinent Oil Rates, 139 I. C. C. 605.
[2] Rate to Graceville, Minn., increased from 54 to 58 cents on Mar. 15, 1930.

Comparison of rates on refined petroleum from Group 3—Continued

Destinations on—	(A) Short-route distance	(B) Present rate	(C) First-class rates under Southwestern scale	(D) Relation of column B to column C	(E) Examiner's proposed rate	(F) Rate prescribed for future	(G) Relation of column F to column C	(H) Reparation rate
Great Northern—Continued								
Duluth-Grand Forks line—Cotinued	*Miles*	*Cents*		*Per cent*	*Cents*	*Cents*	*Per cent*	*Cents*
450 Warba, Minn. to—	1,015	64.5	$2.56	25	58	60	23	.....
Bemidji, Minn.	1,047	[1] 67	2.60	26	59			
Wilton, Minn. to—	1,053	72	2.63	27.5	59	63	24	.....
East Grand Forks, Minn.	1,069	70	2.63	26.5				
Winnipeg lines:								
Downer, Minn.	1,007	67	2.56	26	58	57	22.5	.....
Glyndon, Minn.	908	67	2.53	26.5	57			
Averill, Minn. to—	1,004	70	2.56	27.5	58	60	23	.....
Ada, Minn.	1,028	70	2.60	27	59			
Lockhart, Minn.	1,037	70	2.60	27	59	63	24	.....
Beltrami, Minn.	1,045							
Kragnes, Minn. to—	997	70	2.53	27.5	57	60	23.5	.....
Halstad, Minn.	1,023	70	2.56	27.5	58			
Shelly, Minn. to—	1,030	70	2.60	27	59	63	24	.....
Eldred, Minn.	1,047							
Euclid, Minn. to—	1,071	74	2.63	28	59	67	25	.....
Stephen, Minn.	1,106	78	2.69	29	61			
Donaldson, Minn. to—	1,114	78	2.69	29	61	71	26	.....
Noyes, Minn.	1,149	78	2.73	28.5				
Branches north of Duluth-Grand Forks line:								
Red Lake Falls, Minn. to—	1,077	72	2.66	27	60	65	24.5	.....
Thief River Falls, Minn.	1,081	74	2.66	28				
Holt, Minn. to—	1,093	78	2.66	29.5	60	68	25	.....
Badger, Minn.	1,131	78	2.73	28.5	61			
Fox, Minn. to—	1,138	78	2.73	28.5	61	71	25.5	.....
Warroad, Minn.	1,166	78	2.76	28.5	62			
Coleraine, Minn. to—	1,032	59.5	2.60	23	59	.....	.....	.....
Keewatin, Minn.	1,029							
Bengal, Minn. to—	1,024	60	2.56	23.5	58	.....	.....	.....
Virginia, Minn.	1,050	59	2.60	22.5	59	.....	.....	.....
Hibbing, Minn.	1,031	59	2.60	22.5	59	.....	.....	.....
Chisholm, Minn.	1,035							
Fargo to Montana line:								
West Fargo, N. Dak. to—	995	66	2.53	26	57	59	23	.....
Prosper, N. Dak.	1,003	68	2.56	26.5	58			
Pillsbury, N. Dak. to—	1,035	72	2.60	27.5	59	63	24	.....
Hannaford, N. Dak.	1,030							

[1] Rates prescribed in Midcontinent Oil Rates, 1925, 139 I. C. C. 605.

Comparison of rates on refined petroleum from Group 3—Continued

Destinations on—	(A) Short-route distance	(B) Present rate	(C) First-class rates under Southwestern scale	(D) Relation of column B to column C	(E) Examiner's proposed rate	(F) Rate prescribed for future	(G) Relation of column F to column C	(H) Reparation rate
Great Northern—Continued								
Fargo to Montana line—Continued	*Miles*	*Cents*		*Per cent*	*Cents*	*Cents*	*Per cent*	*Cents*
156 Revere, N. Dak.	1,038	76	$2.60	29	59	67	26	
to—								
New Rockford, N. Dak.	1,040							
Bremen, N. Dak.	1,053	81	2.63	31	59	70	26.5	
to—								
Aylmer, N. Dak.	1,092	81	2.66	30.5	60			
Guthrie, N. Dak.	1,102	81	2.69	30	61	72	27	
to—								
Karlsruhe, N. Dak.	1,115							
Verendrye, N. Dak.	1,121	81	2.69	30	61	75	27.5	
to—								
Minot, N. Dak.	1,141	[1] 81	2.73	29.5				
Les Lacs, N. Dak.	1,155	85	2.76	31	65	79	28.5	
to—								
Stanley, N. Dak.	1,195	85	2.79	30.5	67			
Ross, N. Dak.	1,202	88	2.82	31	68	82	28.5	
to—								
Wheelock, N. Dak.	1,240	88	2.86	31	70			
Epping, N. Dak.	1,245	88	2.86	31	70	85	29	
to—								
Fort Bufford, N. Dak.	1,283	93	2.92	32	73			
Grand Forks—Minot line:								
Emerado, N. Dak.	1,078	74	2.66	28	60	65	24.5	
to—								
Larimore, N. Dak.	1,074	74	2.63	28	59			
Niagara, N. Dak.	1,088	74	2.66	28	60	68	25.5	
to—								
Lakota, N. Dak.	1,110	74	2.69	27.5	61			
Bartlett, N. Dak.	1,114	74	2.69	27.5	61	70	26	
to—								
Devils Lake, N. Dak.	1,118	[1] 74						
Penn, N. Dak.	1,105	77	2.69	28.5	61	70	26	
to—								
Leeds, N. Dak.	1,088	77	2.66	29	60			
York, N. Dak.	1,094	77	2.66	29	60	73	26.5	
to—								
Towner, N. Dak.	1,134	81	2.73	29.5	61			
Denbigh, N. Dak.	1,142	81	2.73	29.5	61	75	27.5	
to—								
Surrey, N. Dak.	1,141							
Wahpeton-Casselton line:								
Dwight, N. Dak.	951	66	2.50	26.5	56	57	22.5	
to—								
Kindred, N. Dak.	979	66	2.53	26	57			
Davenport, N. Dak.	984	66	2.53	26	57	59	23.5	
to—								
Durbin, N. Dak.	991							
Chaffee, N. Dak.	999	68	2.53	27	57	60	23.5	

[1] Rates prescribed in Midcontinent Oil Rates, 1925, 139 I. C. C. 605.

Comparison of rates on refined petroleum from Group 3—Continued

	Destinations on—	(A) Short-route distance [1]	(B) Present rate	(C) First-class rates under Southwestern scale	(D) Relation of column B to column C	(E) Examiner's proposed rate	(F) Rate prescribed for future	(G) Relation of column F to column C	(H) Reparation rate
	Great Northern—Continued								
	Fargo to Grand Forks and north:	*Miles*	*Cents*		*Per cent*	*Cents*	*Cents*	*Per cent*	*Cents*
	Harwood, N. Dak.	999	70	$2.53	27.5	57	60	23	.....
	to—								
	Hillsboro, N. Dak.	1,029	70	2.60	27	59			
157	Cummings, N. Dak.	1,037	70	2.60	27	59	63	24	.....
	to—								
	Grand Forks, N. Dak.	1,068	[7] 70	2.63	26.5				
	Manvel, N. Dak.	1,078	76	2.66	28.5	60	67	25	.....
	to—								
	Grafton, N. Dak.	1,105	78	2.69	29	61			
	Auburn, N. Dak.	1,111	80	2.60	29.5	61	72	26.5	.....
	to—								
	Neche, N. Dak.	1,144	80	2.73	29				
	Nash, N. Dak.	1,111	80	2.69	29.5	61	72	26	.....
	to—								
	Walhalla, N. Dak.	1,153	[7] 80	2.76	29	62			
	Other North Dakota lines east of Devils Lake:								
	Amenia, N. Dak.	1,006	68	2.56	26.5	58	59	23	.....
	Arthur, N. Dak.	1,013	72	2.56	28	58	62	24	.....
	to—								
	Mayville, N. Dak.	1,042	74	2.60	28.5	59			
	Hatton, N. Dak.	1,063	74	2.63	28	59	65	24.5	.....
	to—								
	Kempton, N. Dak.	1,068	74						
	McCanna, N. Dak.	1,082	78	2.66	29.5	60	67	25	.....
	to—								
	Conway, N. Dak.	1,099	78						
	Pisek, N. Dak.	1,104	78	2.69	29	61	70	25.5	.....
	to—								
	Milton, N. Dak.	1,132	82	2.73	30				
	Osnabrock, N. Dak.	1,138	82	2.73	30	61	73	26.5	.....
	to—								
	Hannah, N. Dak.	1,171	82	2.76	29.5	62			
	Erie, N. Dak.	1,020	72	2.56	28	58	62	24	.....
	to—								
	Portland, N. Dak.	1,046	72	2.60	27.5	59			
	Absaraka, N. Dak.	1,010	68	2.56	26.5	58	62	24	.....
	to—								
	Page, N. Dak.	1,025	72	2.56	28				
	Colgate, N. Dak.	1,032	72	2.60	27.5	59	65	24.5	.....
	to—								
	Aneta, N. Dak.	1,066	72	2.63					
	Kloten, N. Dak.	1,071	74	2.63	28.5	59	68	25.5	.....
	to—								
	Tolna, N. Dak.	1,090	74	2.66	28	60			
	Hamar, N. Dak.	1,096	74	2.66	28	60	70	26	.....
	to—								
	Fort Totten, N. Dak.	1,119	74	2.69	27.5	61			
	Brocket, N. Dak.	1,123	80	2.69	29.5	61	71	25.5	.....
	to—								
	Weaver, N. Dak.	1,155	83	2.76	30	62			
	Munich, N. Dak.	1,163	83	2.76	30	62	74	26.5	.....
	to—								
	Sarles, N. Dak.	1,183	83	2.79	29.5	63			

[7] Rates prescribed in Midcontinent Oil Rates, 1925, 139 I. C. C. 605.

Comparison of rates on refined petroleum from Group 3—Continued

Destinations on—	(A) Short-route distance	(B) Present rate	(C) First-class rates under Southwestern scale	(D) Relation of column B to column C	(E) Examiner's proposed rate	(F) Rate prescribed for future	(G) Relation of column F to column C	(H) Reparation rate
Great Northern—Continued								
453 Farmers Grain & Shipping Co. line:	*Miles*	*Cents*		*Per cent*	*Cents*	*Cents*	*Per cent*	*Cents*
Webster, N. Dak. to—	1,130	81	$2.73	29.5	61	72	26	
Newville, N. Dak.	1,151	82	2.76	29.5	62			
Olmstead, N. Dak. to—	1,158	82	2.76	29.5	62	74	26.5	
Hansboro, N. Dak.	1,184	84	2.79	30	63			
North Dakota branches west of Devils Lake:								
Maza, N. Dak.	1,107	82	2.69	30.5	61	72	27	
Cando, N. Dak.	1,118							
Bisbee, N. Dak. to—	1,128	82	2.73	30	61	74	27	
St. John, N. Dak.	1,154	84	2.76	30.5	62			
Wolford, N. Dak. to—	1,109	84	2.69	31	61	77	28	
Dunseith, N. Dak.	1,136	84	2.73					
Barton, N. Dak. to—	1,128	84	2.73	31	61	77	28	
Bottineau, N. Dak.	1,153	84	2.76	30.5	62			
Carbury, N. Dak. to—	1,160	88	2.76	32	62	80	28.5	
Antler, N. Dak.	1,195	[1] 88	2.79	31.5	63			
Bantry, N. Dak.	1,149	87	2.73	32	61	77	28	
Upham, N. Dak.	1,157	87	2.76	31.5	62			
Newburg, N. Dak.	1,170	87	2.76	31.5	62	80	28.5	
Maxbass, N. Dak.	1,180	87	2.79	31	63			
Deering, N. Dak.	1,168	85	2.76	31	62	80	28.5	
Glenburn, N. Dak.	1,179	88	2.79	30.5	63			
Lansford, N. Dak. to—	1,190	90	2.79	32.5	63	82	29	
Sherwood, N. Dak.	1,216	90	2.82	32	66			
Hartland, N. Dak. to—	1,171	91	2.76	33	65	82	29	
Lignite, N. Dak.	1,219	93	2.82	33	68			
Stampede, N. Dak. to—	1,227	93	2.86	32.5	70	84	29	
Crosby, N. Dak.	1,252	93	2.89	32	71			
Bowbells, N. Dak.	1,203	91	2.82	32.5	68	82	29	
Northgate, N. Dak.	1,219							
Lostwood, N. Dak. to—	1,209	90	2.82	32	68	82	28.5	
Hamlet, N. Dak.	1,241	95	2.86	33	70			
Wildrose, N. Dak. to—	1,247	95	2.86	33	70	85	29	
Grenora, N. Dak.	1,283	95	2.92	32.5	73			
Cartwright, N. Dak. to—	1,308	100	2.95	34	74	88	29.5	
Watford City, N. Dak.	1,339	100	2.99	33.5	75			

[1] Rates prescribed in Midcontinent Oil Rates, 1925, 139 I. C. C. 605.

Comparison of rates on refined petroleum from Group 3—Continued

Destinations on—	(A) Short-route distance	(B) Present rate	(C) First-class rates under Southwestern scale	(D) Relation of column B to column C	(E) Examiner's proposed rate	(F) Rate prescribed for future	(G) Relation of column F to column C	(H) Reparation rate
454 *Northern Pacific*								
St. Cloud-Fargo line:	*Miles*	*Cents*		*Per cent*	*Cents*	*Cents*	*Per cent*	*Cents*
St. Cloud, Minn.[8]	889	47	$2.40	19.5				
Royalton, Minn.	910	59	2.43	24.5	55	50	20.5	
Little Falls, Minn.	921							
Staples, Minn.	955	61	2.50	24.5	56	54	21.5	
Verndale, Minn.	966	[7] 62.5	2.50	25	56	55	22	
Wadena, Minn.	961							
New York Mills, Minn. to—	972	64	2.50	25.5	56	57	22.5	
Detroit Lakes, Minn.	988	65	2.53	25.5	57			
Audubon, Minn. to—	995	67	2.53	26.5	57	57	22.5	
Glyndon, Minn.	988							
Moorhead, Minn.	989	[7] 62	2.53	24.5	57	57	22.5	
Fargo, N. Dak.	990							
Branches west of St. Cloud-Fargo line:								
Sauk Center, Minn. to—	918	59	2.43	24.5	55	50	20.5	
Morris, Minn.	886	[7] 54	2.40	22.5	54			
Henning, Minn. to—	945	65	2.47	26	56	55	22.5	
Wahpeton, N. Dak.	944	[7] 60	2.47	24.5	56			
Duluth to Staples line:								
Duluth, Minn.[8]	972	47	2.50	19				
Cromwell, Minn.	974	59	2.50	23.5	56	54	21.5	
Tamarack, Minn.	986	61.5	2.53	24.5	57			
McGregor, Minn.	995	61.5	2.53	24.5	57			
Aitkin, Minn.	979	63	2.53	25	57	57	22.5	
Ironton, Minn.	973	63	2.50	25	56			
Brainerd, Minn.	952	61	2.50	24.5	56	54	21.5	
Motley, Minn.	962							
International Falls line:								
Pequot, Minn. to—	976	65	2.53	25.5	57	60	23.5	
Walker, Minn.	1,015	67	2.56	26	58			
Bemidji, Minn.	1,047	[7] 67	2.60	26	59	60	23	
Blackduck, Minn.	1,071	72	2.63	27.5	59	65	24.5	
Northhome, Minn.	1,087	72	2.66	27	60			
Big Falls, Minn.	1,118	72	2.69	27	61	68	25.5	
International Falls, Minn.	1,146	74.5	2.73	27.5	61	71	26	
Winnipeg line:								
Ulen, Minn.	1,021	69.5	2.56	27	58	60	23	
Twin Valley, Minn.	1,033	69.5	2.60	27	59			
Fertile, Minn. to—	1,053	71	2.63	27	59	63	24	70
Grand Forks, N. Dak.	1,068	[7] 70	2.63	26.5				
Red Lake Falls, Minn.	1,077	72	2.66	27	60	65	24.5	
Gilby, Minn. to—	1,094	76	2.66	28.5	60	67	25	
Grafton, N. Dak.	1,105	[7] 78	2.69	29	61			
Drayton, N. Dak. to—	1,121	80	2.69	29.5	61	71	26	
Pembina, N. Dak.	1,149	80	2.73	29				

[8] Points not here in issue shown for comparison.
[7] Rates prescribed in Midcontinent Oil Rates, 1925, 139 I .C. C. 605.

Comparison of rates on refined petroleum from Group 3—Continued

Destinations on—	(A) Short-route distance	(B) Present rate	(C) First-class rates under Southwestern scale	(D) Relation of column B to column C	(E) Examiner's proposed rate	(F) Rate prescribed for future	(G) Relation of column F to column C	(H) Reparation rate
Northern Pacific—Continued								
160 North Dakota main line:	*Miles*	*Cents*		*Per cent*	*Cents*	*Cents*	*Per cent*	*Cents*
West Fargo, N. Dak.	995	66	$2.53	26	57	59	23.5	
to—								
Casselton, N. Dak.	909							
Buffalo, N. Dak.	1,015	74	2.56	29	58	61	24	
to—								
Valley City, N. Dak.	1,014							
Sanborn, N. Dak.	1,004	76	2.56	29.5	58	63	25	
Jamestown, N. Dak.	980	[1] 76	2.53	30	57			
Cleveland, N. Dak.	1,000	79	2.53	31	57	67	26	
to—								
Tappen, N. Dak.	1,025	79	2.56	31	58			
Steele, N. Dak.	1,038	82	2.60	31.5	59	70	26.5	
to—								
Bismarck, N. Dak.	1,055	[1] 82	2.63	31				
Mandan, N. Dak.	1,061	85	2.63	32.5	62	73	27.5	
New Salem, N. Dak.	1,089	85	2.66	32	63			
Almont, N. Dak.	1,101	85	2.69	31.5	65	75	28	
to—								
Glenullen, N. Dak.	1,118	88	2.69	32.5	66			
Hebron, N. Dak.	1,131	88	2.73	32	66	78	28.5	
to—								
Dickinson, N. Dak.	1,170	[1] 88	2.76	32	68			
South Heart, N. Dak.	1,180	94	2.79	33.5	70	82	28.5	
to—								
Beach, N. Dak.	1,235	94	2.86	33	72			
North Dakota branches south of main line:								
Great Bend, N. Dak.	963	69	2.50	27.5	56	58	23.5	
to—								
Oakes, N. Dak.	929	[1] 73	2.47	29.5				
ndependence, N. Dak.	944	75	2.47	30.5	56	60	24.5	
to—								
Edgeley, N. Dak.	939	73.5	2.47	30				
Dickey, N. Dak.	966	76	2.50	30.5	56	63	25	
to—								
Ypsilanti, N. Dak.	986	76	2.53	30	57			
Verona, N. Dak.	951	75	2.50	30	56	60	23.5	
to—								
Sheldon, N. Dak.	986	72	2.53	28.5	57			
Davenport, N. Dak.	984	66	2.53	26	57	59	23.5	
Jud, N. Dak.	953	79	2.50	31.5	56	63	25	
to—								
Streeter, N. Dak.	980	79	2.53	31	57			
Lucca, N. Dak.	996	74	2.53	29	57	61	24	
Nome, N. Dak.	1,032	76	2.60	29	59	63	24	
to—								
Marion, N. Dak.	1,059	76	2.63					
Hazelton, N. Dak.	1,009	83	2.56	32.5	58	70	27.5	
Linton, N. Dak.	992	79.5	2.53	31.5	57			

[1] Rates prescribed in Midcontinent Oil Rates, 1925, 139 I. C. C. 605.

Comparison of rates on refined petroleum from Group 3—Continued

Destinations on—	(A) Short-route distance	(B) Present rate	(C) First-class rates under Southwestern scale	(D) Relation of column B to column C	(E) Examiner's proposed rate	(F) Rate prescribed for future	(G) Relation of column F to column C	(H) Reparation rate
Northern Pacific—Continued								
North Dakota branches south of main line—Continued.	*Miles*	*Cents*		*Per cent*	*Cents*	*Cents*	*Per cent*	*Cents*
Solen, N. Dak. to—	1,108	87	$2.69	32.5	61	75	28	.....
Mott, N. Dak.	1,108	80	2.69	29.5				
Golva, N. Dak.	1,248	94	2.86	33	64	85	29.5	.....
161 North Dakota branches north of main line:								
Rogers, N. Dak. to—	1,014	76	2.56	29.5	58	63	24	.....
Hannaford, N. Dak.	1,030	72	2.60	27.5	59			
Cooperstown, N. Dak. to—	1,040	80	2.60	31	59	67	25.5	.....
McHenry, N. Dak.	1,067	80	2.63	30.5				
Pingree, N. Dak. to—	1,001	80	2.56	31.5	58	67	26	76
New Rockford, N. Dak.	1,040	76	2.60	29	59			
Sheyenne, N. Dak. to—	1,051	82	2.63	31	59	70	26.5	77
Leeds, N. Dak.	1,088	77	2.66	29	60			
Woodworth, N. Dak. to—	1,022	84	2.56	33	58	70	27	.....
Robinson, N. Dak.	1,046	84	2.60	32.5	59			
Tuttle, N. Dak. to—	1,056	84	2.63	32	59	73	27.5	.....
Wilton, N. Dak.	1,083	84	2.66	31.5	60			
Sykeston, N. Dak. to—	1,037	84	2.60	32.5	59	71	27	.....
Hurdsfield, N. Dak.	1,062	84	2.63	32				
Goodrich, N. Dak. to—	1,071	84	2.63	32	59	75	28	.....
Turtle Lake, N. Dak.	1,109	84	2.69	31	61			
Esmond, N. Dak.	1,087	84	2.66	31.5	60	70	26.5	.....
Stanton, N. Dak. to—	1,115	88	2.69	32.5	65	77	28	.....
Golden Valley, N. Dak.	1,149	94	2.73	34.5	67			
Halliday, N. Dak. to—	1,163	94	2.76	34	68	80	28.5	.....
Killdeer, N. Dak.	1,183	94	2.79	33.5	70			
Soo Line								
Paynesville to Fairmount line: Paynesville, Minn.[1]	857	47	2.37	20	.....	.....	.....	.....
Regal, Minn. to—	864	55	2.37	23	53	50	21	.....
Glenwood, Minn.	895	59	2.40	24.5	54			
Lowry, Minn. to—	904	60	2.43	24.5	55	53	21.5	.....
Elbow Lake, Minn.	934	60	2.47	24.5	56			
Weldell, Minn. to—	941	60	2.47	24.5	56	55	22.5	.....
Fairmount, N. Dak.	937							

[1] Points not here in issue shown for comparison.

Comparison of rates on refined petroleum from Group 3—Continued

Destinations on—	(A) Short-route distance	(B) Present rate	(C) First-class rates under Southwestern scale	(D) Relation of column B to column C	(E) Examiner's proposed rate	(F) Rate prescribed for future	(G) Relation of column F to column C	(H) Reparation rate
Soo Line—Continued								
Brooten to Duluth line:	*Miles*	*Cents*		*Per cent*	*Cents*	*Cents*	*Per cent*	*Cents*
Elrosa, Minn. to—	890	59	$2.40	24.5	54	50	20.5	.....
Bowlus, Minn.	925	59	2.43	24.5	55			
Genola, Minn. to—	942	59	2.47	24	56	54	21.5	.....
Onamia, Minn.	965	59	2.50	23.5				
Wahkon, Minn. to—	973	59	2.50	23.5	56	57	22.5	.....
Denham, Minn.	1,007	57.5	2.56	22.5	58			
162 Glenwood to Noyes line:								
Forada, Minn. to—	905	60	2.43	24.5	55	53	22	.....
Alexandria, Minn.	912							
Carlos, Minn. to—	919	62.5	2.43	25.5	55	55	22.5	.....
Henning, Minn.	945	64	2.47	26	56			
Ottertail, Minn. to—	954	65	2.50	26	56	57	22.5	.....
Detroit Lakes, Minn.	988	65	2.53	25.5	57			
Westbury, Minn. to—	996	69.5	2.53	27.5	57	60	23.5	.....
Wauban, Minn.	1,015	69.5	2.56	27	58			
Mahnomen, Minn. to—	1,024	71	2.56	27.5	58	63	24	.....
Erskine, Minn.	1,048	72	2.60	27.5	59			
Brooks, Minn. to—	1,058	72	2.63	27.5	59	65	24.5	.....
Thief River Falls, Minn.	1,081	74	2.66	28	60			
Newfolden, Minn. to—	1,099	78	2.66	29.5	60	68	25.5	.....
Karlstad, Minn.	1,117	78	2.69	29	61			
Halma, Minn. to—	1,124	78	2.69	29	61	71	26	.....
Noyes, Minn.	1,149	78	2.73	28.5				
Moose Lake to Plummer line:								
Kettle River, Minn. to—	1,005	57	2.56	22.5	58	57	22	.....
Shovel Lake, Minn.	1,028	64	2.60	24.5	59			
Remer, Minn. to—	1,038	65	2.60	25	59	60	23	.....
Bemidji, Minn.	1,047	[7] 67	2.60	26				
Pinewood, Minn. to—	1,062	72	2.63	27.5	59	65	24.5	.....
Oklee, Minn.	1,075							
Aitkin branch:								
Aitkin, Minn. to—	979	63	2.53	25	57	57	22.5	.....
Riverton, Minn.	976	63.5						

[7] Rates prescribed in Midcontinent Oil Rates, 1925, 139 I. C. C. 605.

Comparison of rates on refined petroleum from Group 3—Continued

	Destinations on—	(A) Short-route distance	(B) Present rate	(C) First-class rates under Southwestern scale	(D) Relation of column B to column C	(E) Examiner's proposed rate	(F) Rate prescribed for future	(G) Relation of column F to column C	(H) Reparation rate
	Soo Line—Continued								
	North Dakota line to Portal:	*Miles*	*Cents*		*Per cent*	*Cents*	*Cents*	*Per cent*	*Cents*
	Hankinson, N. Dak.	951	63	$2.50	25	56	58	.....	23
	to—								
	Wyndmere, N. Dak.	997	72	2.53	28.5	57			
	McLeod, N. Dak.	1,000	72	2.53	28.5	57	60	23.5	.....
	to—								
	Enderlin, N. Dak.	988	72						
	Lucca, N. Dak.	996	72	2.53	28.5	57	61	24	.....
	to—								
	Valley City, N. Dak.	1,014	74	2.56	29	58			
	Rogers, N. Dak.	1,003	76	2.56	29.5	58	63	24.5	.....
	to—								
	Wimbledon, N. Dak.	1,003	76						
	Courtney, N. Dak.	1,009	76	2.56	29.5	58	67	26	.....
	to—								
	Carrington, N. Dak.	1,024	76						
162a	Cathay, N. Dak.	1,039	81	$2.60	31	59	70	26.5	.....
	to—								
	Drake, N. Dak.	1,091	81	2.66	30.5	60			
	Balfour, N. Dak.	1,099	81	2.66	30.5	60	72	27	.....
	to—								
	Voltaire, N. Dak.	1,114	81	2.69	30	61			
	Velva, N. Dak.	1,119	81	2.69	30	61	75	27.5	.....
	to—								
	Minot, N. Dak.	1,141	81	2.73	29.5	61			
	Burlington, N. Dak.	1,148	85	2.73	31	64	78	28	.....
	to—								
	Donnybrook, N. Dak.	1,176	91	2.79	32.5	66			
	Kenmare, N. Dak.	1,190	91	2.79	32.5	67	82	29	10
	to—								
	Portal, N. Dak.	1,222	100	2.82	35.5	69			
	Fairmount to Bismarck and Max:								
	Lidgerwood, N. Dak.	963	63	2.50	25	56	58	23	.....
	to—								
	Fullerton, N. Dak.	932	73.5	2.47	30				
	Merricourt, N. Dak.	933	76	2.47	31	56	61	24.5	.....
	to—								
	Fredonia, N. Dak.	953	76	2.50	30.5				
	Lehr, N. Dak.	966	76	2.50	30.5	56	64	25.5	.....
	Wishek, N. Dak.	976	76	2.53	30	57			
	Danzig, N. Dak.	987	76	2.53	30	57	67	26	.....
	to—								
	Venturia, N. Dak.	1,005	76	2.56	29.5	58			
	Burnstad, N. Dak.	986	82	2.53	32.5	57	67	26.5	.....
	Napoleon, N. Dak.	998							
	Kintyre, N. Dak.	1,008	82	2.56	32	58	70	26.5	.....
	Bismarck, N. Dak.	1,055	82	2.63	31	59			
	Baldwin, N. Dak.	1,074	84	2.63	32	59	73	27.5	.....
	to—								
	Washburn, N. Dak.	1,100	85	2.66	32	60			
	Underwood, N. Dak.	1,113	85	2.69	31.5	60	75	27.5	.....
	to—								
	Garrison, N. Dak.	1,133	85	2.73	31				
	Kief, N. Dak.	1,100	85	2.66	32	60	75	27.5	.....
	to—								
	Max, N. Dak.	1,139	85	2.73	31	61			

[1] Rates prescribed in Midcontinent Oil Rates, 1925, 139 I. C. C. 605.

Comparison of rates on refined petroleum from Group 3—Continued

Destinations on—	(A) Short-route distance	(B) Present rate	(C) First-class rates under Southwestern scale	(D) Relation of column B to column C	(E) Examiner's proposed rate	(F) Rate prescribed for future	(G) Relation of column F to column C	(H) Reparation rate
Soo Line—Continued.								
Thief River Falls to Kenmare line:	*Miles*	*Cents*		*Per cent*	*Cents*	*Cents*	*Per cent*	*Cents*
Viking, Minn. to—	1,095	74	$2.66	28	60	67	25	
Oslo, Minn.	1,105	75.5	2.69	28	61			
Ardoch, N. Dak. to—	1,089	76	2.66	28.5	60	67	25	
Fordville, N. Dak.	1,114	78	2.69	29	61			
Lankin, N. Dak. to—	1,123	80	2.69	29.5	61	72	26	
Nekoma, N. Dak.	1,151	82	2.76	29.5	62			
Loma, N. Dak. to—	1,160	82	2.76	29.5	62	74	27	
Bisbee, N. Dak.	1,128	82	2.73	30	61			
162 Mylo, N. Dak. to—	1,139	84	$2.73	31	61	77	28	
Kramer, N. Dak.	1,160	87	2.76	31.5	62			
Russell, N. Dak. to—	1,169	87	2.76	31.5	62	80	28.5	
Eckman, N. Dak.	1,176	90	2.79	32.5	63			
Lansford, N. Dak. to—	1,190	90	2.79	32.5	63	82	29	
Norma, N. Dak.	1,221	91	2.82	32.5	66			
Other North Dakota lines:								
Dahlen, N. Dak. to—	1,123	78	2.69	29	61	70	25.5	
Southam, N. Dak.	1,139	78	2.73	28.5	61			
Harlow, N. Dak. to—	1,139	81	2.73	29.5	61	70	25.5	
Orrin, N. Dak.	1,107	81	2.69	30	61			
Douglas, N. Dak. to—	1,151	85	2.76	31	65	78	28.5	
Plaza, N. Dak.	1,175							
Parshall, N. Dak. to—	1,183	88	2.79	31.5	67	82	29	
Sanish, N. Dak.	1,203	88	2.82	31	68			
Columbus, N. Dak. to—	1,230	93	2.86	32.5	70	84	29	
Crosby, N. Dak.	1,253	93	2.89	32	71			
Ambrose, N. Dak. to—	1,262	95	2.89	33	72	85	29	
Alkabo, N. Dak.	1,283	95	2.92	32.5	73			
C., M., St. P. & P.								
Granite Falls-Fargo line:								
Ortonville, Minn. to—	905	54	2.43	22	55	53	22	
Graceville, Minn.	914	[8] 54	2.43					
Collis, Minn. to—	920	58	2.43	24	55	55	22.5	
Wahpeton, N. Dak.	944	[7] 60	2.47	24.5	56			
Ingram, N. Dak. to—	946	62	2.47	25	56	57	22.5	
Fargo, N. Dak.	990	[7] 62	2.53	24.5	57			

[7] Rates prescribed in Midcontinent Oil Rates, 1925, 139 I. C. C. 605.
[8] Rate to Graceville, Minn., increased from 54 to 58 cents on Mar. 15, 1930.

Comparison of rates on refined petroleum from Group 3—Continued

Destinations on—	(A) Short-route distance	(B) Present rate	(C) First-class rates under Southwestern scale	(D) Relation of column B to column C	(E) Examiner's proposed rate	(F) Rate prescribed for future	(G) Relation of column F to column C	(H) Reparation rate
C., M., St. P. & P.—Con.								
North Dakota lines:	*Miles*	*Cents*		*Per cent*	*Cents*	*Cents*	*Per cent*	*Cents*
Brampton, N. Dak.	897	71	$2.40	29.5	54	58	24	.....
Cogswell, N. Dak.	905	72	2.43	29.5	55			
Ellendale, N. Dak. to—	913	71	2.43	29	55	58	24	.....
Monango, N. Dak.	925	73.5	2.43	30				
Potts, N. Dak.	932	73.5	2.47	30	56	60	24.5	.....
Edgeley, N. Dak.	939							
Hague, N. Dak.	971	76	2.50	30.5	56	67	26.5	.....
Strasburg, N. Dak.	982	77.5	2.53	30.5	57			
Linton, N. Dak.	992	79.5	2.53	31.5	57	70	27.5	.....
163 New Leipzig, N. Dak.	1,088	80	$2.66	30	66	75	28	.....
Mott, N. Dak.	1,108	80	2.69	29.5	68			
New England, N. Dak.	1,138	[2] 80	2.73	29.5	69	78	28.5	.....
Lemmon, S. Dak. [1]	1,073	[2] 70	2.63	26.5	.....	.....	.....	.....
Petrel, N. Dak. to—	1,078	82	2.66	31	66	72	27	80
Hettinger, N. Dak.	1,096	90.5	2.66	34	67			
Bucyrus, N. Dak. to—	1,104	94.5	2.69	35	68	75	27.5	80
Bowman, N. Dak.	1,136	103.5	2.73	38	69			
Griffin, N. Dak. to—	1,143	104.5	2.73	38.5	69	78	28.5	88
Montline, N. Dak.	1,170	112	2.76	40.5	70			
C. & N. W.								
Ludden, N. Dak.	919	71	2.43	29	55	58	23.5	.....
Oakes, N. Dak.	929	73	2.47	29.5	56			

[1] Points not here in issue shown for comparison.
[2] Rates prescribed in Midcontinent Oil Rates, 1925, 139 I. C. C. 605.

164 ORDER

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 1st day of December, A. D. 1931

No. 17304

International Oil Company et al.

v.

Abilene and Southern Railway Company et al.

No. 21737

Dacotah Oil Company et al.

v.

The Atchison, Topeka and Santa Fe Railway Company et al.

These cases being at issue upon complaints and answers on file, and having been duly heard and submitted by the parties, and full investi-

gation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the above-named defendants, according as they participate in the transportation from and to the points covered by the respective complaints, be, and they are hereby, notified and required to cease and desist, on or before March 15, 1932, and thereafter to abstain, from publishing, demanding, or collecting rates for the transportation of gasoline and other petroleum products taking the same rates, in carloads, from and to the points described in the next succeeding paragraph hereof which exceed the rates prescribed in said paragraph.

It is further ordered, That said defendants, according as they participate in the transportation from and to the points covered by the respective complaints, be, and they are hereby, notified and required to establish, on or before March 15, 1932, upon notice to this commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the trans-
165 portation of gasoline and other petroleum products taking the same rates, in carloads, from producing points in Missouri, Kansas, Oklahoma, Texas, and Arkansas [1] to destinations in North Dakota and that part of Minnesota north and west of the Great Northern Railroad from Duluth to Pipestone, Minn., rates in cents per 100 pounds which shall not exceed those shown from Group 3 in column F of Appendix B to said report, plus or minus the differentials from other origin groups applicable on like traffic to Willmar and St. Paul, Minn.

And it is further ordered, That the order entered in No. 17304 and related cases on March 5, 1928, be, and it is hereby, vacated and set aside in so far as it affects the rates to points in the destination territory described in the last preceding paragraph hereof; and that this order shall continue in force until the further order of the commission.

By the commission.

[SEAL.] GEORGE B. MCGINTY,
Secretary.

166 [Omitted.]

[1] From points in Arkansas to Jamestown, Buffalo, Valley City, and Cleveland, N. Dak., only.

167 *Exhibit F to petition*

Before the Interstate Commerce Commission

Docket No. 17304

International Oil Company, et al., complainants

vs.

Abilene and Southern Railway Company, et al., defendants

Docket No. 21737

Dakota Oil Company, et al., complainants

vs.

Atchison, Topeka and Santa Fe Railway Company, et al., defendants

PETITION ON BEHALF OF DEFENDANTS TO VACATE AND SET ASIDE OR POSTPONE THE EFFECTIVE DATE OF THE ORDER DATED DECEMBER 1, 1931, AND TO REOPEN THE PROCEEDINGS FOR FURTHER HEARING

Now come defendants, Northern Pacific Railway Company, Great Northern Railway Company, Minneapolis, St. Paul and Sault
168 Ste. Marie Railway Company, and Chicago, Milwaukee, St. Paul and Pacific Railroad Company, and reserving any and all objections and exceptions they may have or claim to the validity of the findings and order made and entered in the above entitled proceedings on December 1, 1931, respectfully petition the commission, in their own behalf and in behalf of all other defendants herein, to vacate and set aside, or postpone the effective date of said order, and to reopen said proceedings for further hearing in order to permit defendants to offer evidence of changes in traffic and transportation conditions and economic conditions since the record in these proceedings was closed, which compel the conclusion that the rates prescribed in said order, even if proper in the light of the evidence in the record (which is denied), will not be adequate or proper for application at the present time or in the light of existing circumstances and conditions. In support of their petition, your petitioners respectively show to the commission, as follows:

I

The rates which will be reduced by the commission's order of December 1, 1931, in these proceedings, are rates on gasoline and other refined petroleum oils from the midcontinent fields to destinations in North Dakota and western Minnesota, which were established on June 14, 1928, in compliance with the commission's order entered in these proceedings on March 5, 1928. They had been in effect
169 less than one year when Docket 17304 was reopened by order dated June 10, 1929, upon petition of the complainants. These cases were thereupon set for further hearing at Fargo, No. Dak., on January 14, 1930. A petition dated December 31, 1930, on behalf

of defendants, requesting a postponement of the hearing and a consolidation of these proceedings with certain closely related proceedings involving the rates on refined petroleum oils from other producing districts to the same destination territory, for hearing and disposition upon a common record, was denied. The further hearing was held as set and the record was closed on January 15, 1930.

Since January 15, 1930, there have been material and important changes in the financial condition of the defendants and in the operating traffic and transportation conditions and economic conditions in the territory they serve, which are material to a determination of the propriety and legality of the rates prescribed by the order of December 1, 1931, herein, the effect of which will be to reduce materially the gross and net revenues of the defendants. These changed conditions have seriously and adversely affected and will continue seriously and adversely to affect the gross and net revenues of the defendants and their ability to furnish the public with the kind of service it requires.

In recognition of these changed conditions and of the needs of the carriers for additional revenues, the Commission in its report in
Fifteen Per Cent case, 1931, Ex Parte 103, in the matter of
170 Increases in Freight Rates and Charges, 178 I. C. C. 539, made
the following statement:

"In addition to these pending revisions and others which are in progress on our docket, we believe that the traffic departments of the railroads should address themselves to the task of making such changes in the rates on particular kinds of traffic as will, in their judgment after careful analysis of all attendant circumstances, produce additional revenue and which can be supported as reasonable under existing conditions. This does not necessarily mean increases in rates. It is quite likely that there are now many rates which will produce more revenue if they are reduced, and we include in this category rates which we ourselves have prescribed as maxima. Some such rates have already been reduced, but we fear that there is at times a reluctance on the part of traffic officers, because of possible contingent effects, to cut below these rates even when they believe that the result would be to railroad advantage. But in addition to reductions it is not at all unlikely that there are a considerable number of rates which can reasonably be advanced substantially, even under present conditions."

II

Petitioners allege and, if this petition is granted and a further hearing had, offer to prove the following facts:

1. Since 1928, the last full year for which figures were available
when the record herein was closed, the ten principal railroads
171 serving the States of Minnesota and North Dakota from the
midcontinent fields, namely, the Great Northern, Northern Pacific, Soo Line, Chicago, Milwaukee, St. Paul & Pacific, Chicago, Rock Island and Pacific, Chicago, Burlington and

Quincy, Chicago and North Western, Chicago, St. Paul, Minneapolis and Omaha, Chicago Great Western, and Minneapolis and St. Louis have suffered a decline in the volume of their traffic as a whole, amounting to 32.48 per cent in freight traffic, and 37.02 per cent in passenger traffic. As a result of this decline in traffic, their combined gross income declined from $971,454,742 in 1928 to $640,774,882 in 1931, or approximately 33 per cent, and their combined net railway operating income decreased from $179,689,261 in 1928 to only $69,649,013 in 1931, or nearly 60 per cent, and their return on property investment declined from 4.36 per cent in 1928 to only 1.61 per cent in 1931. Their combined net income from all sources in 1931 was insufficient to meet their fixed charges by nearly six million dollars.

2. This decline in volume of traffic and in gross and net revenues of these defendants has been due to a widespread economic depression and a consequent basic change in economic conditions and in methods of transportation and distribution which began in the fall of 1929 and has steadily increased in severity and intensity since that time, but which had not become evident at the time the record herein was closed or at the time this proceeding was argued and sub-
172 mitted to the commission. Since the depression began, a substantial volume of freight traffic has been diverted from the railroads to other competing forms of transportation, including motor-truck transportation, water distribution, and transportation by pipe lines. Methods of distribution in the commercial world have changed substantially, so that the freight rate structure of these carriers is necessarily undergoing many revisions, including many rate reductions to meet the competition of other forms of transportation where that competition is found. Such revisions of the freight rate structure will inevitably necessitate increases in freight rates on such traffic as can be made to pay higher rates without unduly burdening the traffic or causing diversions to competing forms of transportation.

3. The refined petroleum products traffic transported by defendants to destinations in the territory involved in these proceedings has not diminished with other traffic during the existing depression, but has somewhat increased in volume since the record in this proceeding was closed, due, perhaps, to the increased activity of motor trucks. During the year 1931, the Great Northern Railway Company delivered 19,408 cars of refined petroleum products at stations on its lines in Minnesota and North Dakota, as compared with 19,115 cars during the year 1930, and only 17,035 cars during the year 1929. During the year 1930, the Northern Pacific Railway Company delivered 6,147 cars of refined petroleum products moving from the midcontinent fields to stations on its lines in Minnesota and
172 North Dakota, as compared with 5,328 cars during the year 1929. During the first seven months of 1931 the Northern Pacific delivered 3,800 cars of refined petroleum products moving from the midcontinent fields to these stations as compared with 3,523 cars during the first seven months of 1930. It is believed that a

similar situation exists in the portions of the destination territory served by the Soo Line and Milwaukee Railroads, but the exact figures for these lines are not yet available. It is the opinion of petitioners' traffic officers that the rates on refined petroleum products from the midcontinent fields to the destination territory in issue herein can reasonably and profitably be advanced, even under present conditions, without unduly burdening the traffic or diverting it to other means of transportation.

4. If the order entered herein on December 1, 1931, should become effective, it would directly reduce the gross and net revenues of your petitioners and of the other defendants herein by substantial amounts. It would directly reduce the gross and net revenues of the Great Northern Railway Company approximately $130,000 a year. It would directly reduce the gross and net revenues of the Northern Pacific Railway Company approximately $98,000 a year. It would directly reduce the gross and net revenues of the Soo Line approximately $35,000 a year. It would directly reduce the gross and net revenues of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company by more than $21,000 a year. The direct and immediate effect of the order would be to reduce the gross and net revenues of the defendants by approximately $600,000 per year in the aggregate. In addition to the losses of revenue which the defendants would suffer as a direct result of the order, the establishment of the reduced rates therein prescribed would inevitably precipitate demands for corresponding reductions in related rates on refined petroleum products from other producing districts to the same destination territory, and the decision and order herein has already precipitated a request for reductions in the local rates of your petitioners from the gasoline pipe line head at the Twin Cities to points in Minnesota and North Dakota west of the Twin Cities. If your petitioners should be compelled to make these reductions in such related rates they would be subjected to additional reductions in their gross and net revenues in substantial and serious amounts.

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III

In further support of their petition, your petitioners respectfully show to the commission that the principal justification stated in the Commission's report herein for the drastic reductions in rates prescribed by the order of December 1, 1931, is the existence of substantially lower rates on refined petroleum products from the midcontinent fields to destinations in South Dakota and to the gateways on the eastern border of the destination territory in issue; that said rates were prescribed by the commission upon records which were closed during the year 1925, and that the traffic and transportation conditions existing in that and prior years were wholly different from those which now confront the carriers serving those destinations. Petitioners allege and offer to prove that the existing rates to South Dakota and to the gateways on the eastern border of the destination territory in issue are unduly and unreasonably low

175

in the light of existing circumstances and conditions and can and should be substantially increased.

The finding by the commission in its report on further hearing herein that the rates in issue "Grade up too rapidly beyond the gateways on the eastern border of the destination territory and as the State line is crossed from South Dakota into North Dakota," and its further finding that "The rates to North Dakota especially are on too high a level compared with the rates to South Dakota," can and should be satisfied by authorizing the publication of increased rates to destinations in South Dakota and to the gateways on the eastern border of the destination territory which are not affected by pipe-line competition, such as St. Cloud, Willmar, Granite Falls, Pipestone, and Sioux Falls, instead of by requiring reductions in the rates prescribed to North Dakota and western Minnesota, as is required by the order of December 1, 1931, herein. Petitioners respectfully submit that in view of existing circumstances and conditions affecting the earnings of the carriers, the commission should reopen its dock-

ets dealing with the rates on refined petroleum products from
176 all producing districts to the entire section of Western Trunk Line territory lying west of the line of the Great Northern from Sioux City through Willmar and St. Cloud to Duluth for further hearing with respect to the levels of the rates maintained thereto pursuant to orders of the commission.

Wherefore petitioners pray that said order herein be vacated and set aside, or that its effective date be postponed; that a rehearing and reconsideration of the same be granted; that the proceedings herein be reopened for the taking of further evidence, and that such other and further relief be granted defendants as to the commission may seem just and proper in the premises.

Respectfully submitted.

J. N. DAVIS,
J. P. PLUNKETT,
A. H. LOSSOW,
M. L. COUNTRYMAN, JR.,
Their Attorneys,
Room 1006 N. P. Ry. Bldg., St. Paul, Minnesota.

ST. PAUL, MINNESOTA, *January 30, 1932.*

177–178 [Omitted.]

179 In the United States District Court

[Title omitted.]

Answer of Interstate Commerce Commission

Filed April 18, 1932

The Interstate Commerce Commission, one of the defendants in the above-entitled suit, hereinafter referred to as the commission,

now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioners' petition contained, for answer thereunto, or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering the opening paragraph, Paragraph I, Paragraph II, subdivisions 1 and 2, Paragraph III, subdivision 1, and Para-
180 graph IV, of the petition, the commission admits, for the purposes of this suit, that the allegations therein contained are true.

II

Answering Paragraph II, subdivision 3, Paragraph III, subdivision 2, and Paragraphs V to XXV, inclusive, of the petition, the commission admits and alleges: That on July 15, 1925, the complaint in Docket 17304, International Oil Co. et al. v. Abilene & So. Ry. Co. et al., referred to in Paragraph V of the petition, was filed with it; that a great number of railroad companies, including the petitioners herein, were made parties in said proceeding; that subsequently, following full hearings, the commission made, entered, and served upon all parties to the proceeding, including the petitioners herein, the report dated May 10, 1926, in Docket 15584, Midcontinent Oil Rates, 1925, referred to in Paragraph VI of the petition, a copy of which report is attached to the petition and made a part thereof as "Exhibit A," to which the commission refers the court for full, complete, and accurate information concerning the contents thereof and for a description of the proceedings before the commission upon which the report was and is based; that subsequently, following full hearings, the commission made, entered, and served upon all parties in said proceeding, including the petitioners herein, its second supplemental report and order of March 5, 1928, in Midcontinent
181 Oil Rates, 1925, a consolidated proceeding including, among other cases, said Docket 17304, referred to in Paragraph V of the petition; that a copy of said report and order of March 5, 1928, is attached to and made a part of the petition as "Exhibit B," to which the commission refers the court for more full, complete, and accurate information concerning the contents of said report and order and for a description of the proceedings before the commission upon which the report and order were and are based; that subsequently the commission made, entered, and served upon all parties in the proceeding, including petitioners herein, the report and order dated March 30, 1929, referred to in Paragraph IX of the petition, a copy of which report and order is attached to and made a part of the petition as "Exhibit C," to which the commission refers the court for more full, complete, and accurate information concerning the contents of said report and order and for a description of the

proceedings before the commission upon which the report and order were and are based; that, as alleged in Paragraphs X, XII, and XIII of the petition, the complaints in Dockets 21737, Dacotah Oil Co. et al. v. A. T. & S. Fe Ry. Co. et al.; Docket 22714, Standard Oil Co. (Indiana) v. C. & N. W. Ry. Co. et al.; and Docket 22733, Public Service Commission of Wyoming v. C. & N. W. Ry. Co. et al., were filed with the commission; that, as alleged in Paragraph XV
182 of the petition, the carriers referred to therein filed a joint petition dated December 31, 1929, with the commission, requesting the commission to consolidate said Dockets 17304, 22714, and 22733 for hearing and decision upon a common record, which petition the commission denied by order dated April 14, 1930; and that, subsequently, the commission made, entered, and served upon all parties in the proceeding, including petitioners herein, its report and order, dated December 1, 1931, referred to in Paragraph XVI of the petition, and made a part thereof as "Exhibit E," to which the commission refers the court for full, complete, and accurate information concerning the contents of said report and order and for a description of the proceedings before the commission upon which the report and order were and are based.

The commission further alleges that at the hearings referred to in Paragraphs V, VI, IX, X, and XIV of the petition, in connection with the subject matters covered by said reports and orders, the commission accorded to all interested parties, including petitioners herein, a full and fair opportunity to be heard; that at said hearings a large volume of testimony and other evidence bearing upon said matters was submitted to the commission for consideration on behalf of said parties, including the petitioners herein, by their respective counsel; that at said hearings and subsequently, both orally and in briefs filed in said proceedings, questions relating to said
183 matters were fully argued and submitted to the commission for determination on behalf of said parties by their respective counsel, whereupon the commission determined said matters: that said reports and orders included the commission's findings of fact, decisions, conclusions, orders, and requirements in the premises, and that, upon the evidence aforesaid, and as shown in and by said reports, the commission made the findings and stated the conclusions upon which said orders are based.

The commission further alleges that the findings and conclusions in said reports were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceedings as aforesaid.

The commission further alleges that in making said reports and orders it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties to said proceedings by their respective counsel, including matters covered by the allegations of the petition herein.

The commission further alleges that said orders were not made or entered either arbitrarily, or unjustly, or contrary to the relevant evidence, or without evidence to support them; that in making said orders the commission did not exceed the authority which had been duly conferred upon it, and the commission denies each of and all the allegations to the contrary contained in the petition.

184 III

Further answering Paragraph VII of the petition, the commission admits that it made and filed the report therein referred to and made a part of the petition as "Exhibit B." In this connection the commission alleges that in and by said report it not only found that reparation should be denied, but it also found, among other things, as shown by said report, "That the rates on gasoline and other petroleum products taking the same rates from Group 3, as that group is defined in our original report herein, to points in South Dakota, North Dakota, and that part of Minnesota covered by these proceedings, are and for the future will be unreasonable and unduly prejudicial to the extent that they exceed the respective rates set forth in Appendixes A and C under the heading 'Rate prescribed.'"

Further answering Paragraph VIII of the petition, the commission admits that, on or about May 4, 1928, the petitioners herein filed the petition referred to therein, and that said petition was denied by it by order dated February 11, 1929.

Further answering Paragraphs XVII to XXV, inclusive, of the petition, the commission denies that said order of December 1, 1931, is invalid either for any of the reasons set forth in said paragraphs, or for any other reason or reasons; denies that it acted in an arbitrary and unreasonable manner or in excess of the authority
185 conferred upon it. The commission also denies that in making said reports and orders it gave consideration to facts and matters outside the record; denies that its reports and orders are not supported by the evidence or are contrary to the evidence. The commission also denies that the effect of said orders will be to deprive petitioners of their property without due process of law or will result in irreparable damage, in violation of the Constitution of the United States, or otherwise. The commission also denies that in making such reports and orders it either disregarded or misinterpreted or misconstrued Section 15a of the Interstate Commerce Act, or that it proceeded upon a misconception of its powers or duties thereunder.

Further answering Paragraphs XXI and XXII of the petition, the commission admits that on October 16, 1931, it issued its report and order in the Fifteen Per Cent case of 1931, In the Matter of Increases in Freight Rates and Charges (178 I. C. C. 539), referred to in said paragraphs. For full, complete, and accurate information concerning the contents of said report and order and for a description of the proceedings before the commission upon which said report

and order were and are based, the commission refers the court to said report and order, attached hereto and made a part hereof as "Exhibit 1." In this connection the commission alleges that,
186 on December 5, 1931, it issued a "Supplemental Report on Reconsideration" (179 I. C. C. 215) in said Fifteen Per Cent case, 1931, which supplemental report is attached hereto and made a part hereof as "Exhibit 2," and to which the commission respectfully refers the court for more full and complete information in the premises.

Further answering Paragraphs XXIII and XXIV of the petition, the commission admits the filing with it, on or about February 3, 1932, of the petition for rehearing and reconsideration, and vacation of its said order of December 1, 1931, referred to in Paragraph XXIII of the petition and made a part thereof as "Exhibit F." In this connection the commission alleges that on or about February 13, 1932, the complainants before the commission filed with it a petition to reopen for rehearing, reargument, and reconsideration on the findings of past unreasonableness and reparation and complainants' reply to petition by carriers for rehearing as to findings of future unreasonableness, a copy of which reply is attached hereto and made a part hereof as "Exhibit 3," and to which the commission respectfully refers the court for more full and complete information in the premises. The commission admits that petitioners' petition to reopen, rehear, and vacate said order of December 1, 1931, was denied by it by order dated March 7, 1932. The commission denies that the action taken thereon was or constituted an abuse of its
187 administrative discretion, and, on the contrary, it avers that it gave due consideration to said petition. The commission further alleges that its action in denying said petition was not in any respect in excess of the authority conferred upon it.

IV

Further answering Paragraph XXV of the petition, the commission admits that the failure of the carriers involved to comply with the requirements of the commission's order will make them subject to severe penalties, pursuant to the provisions of the interstate commerce act. It denies all the other allegations therein contained.

Further answering Paragraph XXV of the petition, the commission denies that petitioners will suffer irreparable injury unless enforcement of said order of December 1, 1931, is enjoined and suspended.

Except as herein expressly admitted, the commission denies the truth of each of and all the allegations contained in the petition, in so far as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said report of May 10, 1926, 112 I. C. C. 421; said report and order of March 5, 1928, 139 I. C. C. 605; said report and order of March 30, 1929, 153

I. C. C. 363; and said report and order of December 1, 1931, 179
188 and maV47
I. C. C. 435, which reports and orders are hereby referred to and made a part hereof.

188 All of which matters and things the commission is ready to aver, maintain and prove as this Honorable Court shall direct, and hereby prays that said petition be dismissed.

INTERSTATE COMMERCE COMMISSION,
By E. M. REIDY,
Assistant Chief Counsel.

DANIEL W. KNOWLTON,
Of Counsel.

[*Duly sworn to by Frank McManamy; jurat omitted in printing.*]

189 *Exhibit 1 to answer*

17221

Interstate Commerce Commission

Fifteen Per Cent Case, 1931

Ex Parte No. 103

In the Matter of Increases in Freight Rates and Charges

Submitted September 30, 1931. Decided October 16, 1931

Application of the rail carriers in the United States for waiver of rules governing publication of schedules so as to permit filing upon short notice of blanket supplements effecting a general increase in freight charges of 15 per cent., denied. Suggestions made, in consideration of existing circumstances and in the interest of the preservation of an adequate system of transportation, for specific increases in rates upon designated commodities during a limited period, conditioned upon the submission and approval of arrangements between the carriers for the pooling of the revenue accruing from the suggested increases so as primarily to enable them to meet their fixed interest payments as they mature.

Clyde Brown, Henry Wolf Birklé, J. J. Cornwell, H. Fitzpatrick, W. W. Meyer, M. Carter Hall, Chas. R. Webber, and Earle C. Calhoun for carriers in eastern group; Henry J. Hart for Bangor & Aroostook Railroad Company; W. H. T. Loyall, John C. Donnally, and Fred N. Oliver for Virginian Railway Company; H. T. Newcomb for Delaware & Hudson Railroad, Greenwich & Johnsonville Railway, Schoharie Valley Railway, and Cooperstown & Charlotte Valley Railway; G. F. Snyder for Canadian Pacific Railway Com-

pany (lines in Maine and Vermont), Spokane International Railway Company, and Aroostook Valley Railroad Company; Charles H. Blatchford for Maine Central Railroad Company and Portland Terminal Company; W. A. Cole for Boston & Maine Railroad; Eugene S. Williams for Western Maryland Railway Company; William L. Kinter for Reading Company; Daniel Willard, jr., and E. L. Beach for Baltimore & Ohio Railroad Company; W. S. Jenney for Delaware, Lackawanna & Western Railroad Company; H. A. Taylor and M. B. Pierce for Erie Railroad Company, Chicago & Erie Railroad Company, New York, Susquehanna & Western Railroad Company; Wilkes-Barre & Eastern Railroad Company, New Jersey & New York Railroad Company, and Bath & Hammondsport Railroad Company; S. R. Merriam for Pere Marquette Railway; W. N. McGehee, Frank W. Gwathmey, E. A. Smith, and William A. Northcutt for
190 carriers in southern group; W. F. Dickinson, R. V. Fletcher, Ben C. Dey, J. R. Bell, D. F. Lyons, M. L. Countryman, jr., M. G. Roberts, Walter McFarland, J. M. Souby, Leslie Craven, P. F. Gault, J. N. Davis, L. H. Strasser, and H. H. Larimore for carriers in western group, also certain carriers by water: H. E. McGee and George T. Atkins for Missouri-Kansas-Texas lines; A. J. Laughon, O. P. Kellogg, F. N. Hicks, and M. L. Bluhm for Chicago, Milwaukee, St. Paul & Pacific Railroad Company; A. S. Halsted, E. E. Bennett, E. C. Renwick, Charles A. Root, and W. Hal Farr for Union Pacific lines; C. D. Bordelon and Harry R. Jones for Gulf Coast Lines, and International-Great Northern; B. F. Batts and J. C. Winfield for St. Louis Southwestern Railway lines; Fred L. Wallace and L. M. Hogsett for Fort Worth & Denver City Railway Company; S. G. Reed for Texas & New Orleans Railroad; F. R. Newman for Minneapolis, St. Paul & Sault Ste. Marie Railway Company; W. H. Bremner for Minneapolis & St. Louis Railroad Company; James E. Taussig and N. S. Brown for Wabash Railway Company; Ben B. Cain, and Clarence A. Miller for Christie & Eastern Railway Company, Sabine & Neches Valley Railway Company, and LaSalle & Bureau County Railway Company; W. E. Coman, F. A. Cleveland, Thomas H. Maguire, and R. E. Smith for Northern Pacific Railway Company; J. E. Gorman, A. Mackenzie, and George E. Schnitzer for Chicago, Rock Island & Pacific Railway Company, and Chicago, Rock Island & Gulf Railway Company; B. S. Atkinson, sr., for Louisiana & Arkansas Railway Company and Louisiana, Arkansas & Texas Railway Company; W. G. Baird for Chicago & Alton Railroad; Thomas Balmer for Great Northern Railway Company; Alfred A. Hampson and Robert M. Kerr for Southern Pacific Company; Robert Thompson, J. A. Lynch, and C. M. Spence for Texas & Pacific Railway Company and subsidiary lines; C. D. Cass for American Electric Railway Association.

Ralph R. Bradley for Cincinnati & Lake Erie Railroad Company, Indiana Railroad, Indiana Service Corporation, Public Service Corporation, Public Service Company of Indiana, Northern Indiana

Power Company, Fort Wayne-Lima Railroad Company, Chicago, North Shore & Milwaukee Railroad Company, Chicago, South Shore & South Bend Railroad, and Chicago, Aurora & Elgin Railroad Company; A. R. Yarborough for Alabama Central Railway, Kanawha Central Railway Company, Stroud's Creek & Muddlety Railroad Company, and Winifrede Railway Company; William S. Bronson and W. W. Ahrens for Virginia Central Railway; C. F. Taplin and William S. Bronson for Pittsburgh & West Virginia Railway Company; A. E. Wallace for Duluth, South Shore & Atlantic Railway Company; Guy V. Shoup and J. R. Bell for Visalia
191 Electric Railroad Company, Fresno Traction Company, and Peninsular Railway Company; Arthur Van Meter for Monongahela Railway Company and Pittsburgh, Chartiers & Youghiogheny Railway Company; James W. Carmalt for Pacific & Idaho Northern Railway Company; Frederick E. Brown for Manufacturers Railway Company and St. Louis & O'Fallon Railway Company; Ben B. Cain and Clarence A. Miller for various short lines; J. B. Dempsey for West Virginia Midland Railway Company; L. E. Earlywein for certain electric-railway carriers in C. F. A. territory; William T. Faricy for Minnesota Transfer Railway Company; W. L. Meyers for certain electric railroads; William Jay Turner and George P. Orlady for Lehigh & New England Railroad Company; W. H. Weeks for Kansas City Connecting Railroad Company; A. E. Morris for Texas Electric Railway; S. P. Collier for Winston-Salem Southbound Railway Company; J. S. Babbitt for Sand Springs Railway Company; Frank Lyon for Luckenbach Steamship Company, Luchenbach Gulf Steamship Company, and American Hawaiian Steamship Company; J. C. Gillespie for Nicholson Universal Steamship Company; Ralph S. Fowler for Gulf Pacific Line, Limited, and Swayne & Hoyt, Limited; Frank W. Sullivan for Great Lakes Transit Corporation; C. E. Dempsey for Cleveland & Buffalo Transit Company; A. R. Sheff for Minnesota-Atlantic Transit Company; George B. Wright for Detroit & Cleveland Navigation Company.

Hughes, Schurman & Dwight, Charles E. Hughes, jr., Fred N. Oliver, and Frederick W. R. Pride for security holders' committee on the railroad emergency; Root, Clark & Buckner, Grenville Clark, Henry J. Friendly, and Jeremiah M. Evarts for emergency committee on railroad investments of life-insurance companies and mutual savings banks.

John E. Benton and Clyde S. Bailey for legal committee of Western States' commissions and certain other State commissions; Joseph E. Warner and Donald C. Starr for Commonwealth of Massachusetts; Ralph W. Davis for State of New Hampshire; John A. Bernhard for Board of Public Utilities Commissioners of New Jersey; L. J. Dorr for New York State Department of Agriculture and Markets; J. W. Herrold, Gilbert Bettman, and T. J. Herbert for Public Utilities Commission of Ohio; G. H. Shafer, J. Paul Kuhn, and

C. W. Hadley for Illinois Commerce Commission; Hugh E. Wilson, F. M. Wintermute, R. H. Dunn, and K. F. Clardy for Michigan Public Utilities Commission; John C. Goddin for State of Virginia, Department of Agriculture; H. E. Ketner for Corporation Commission of Virginia; W. G. Womble for North Carolina Corporation Commission; W. L. Glaze for South Carolina State Highway Department; E. M. Price for Georgia Public Service Commission;
192 J. W. Cammack, Moses R. Glenn, Oscar Vest, Thos. H. Lauhon, Douglas C. Vest, M. B. Holifield, Chas. Satterfield, and L. F. Orr for Railroad Commission of Kentucky and Commonwealth of Kentucky; W. F. Barry, jr., J. O. Hendley, and John L. Nealy, sr., for State of Tennessee; T. T. Turnbull, Fred Pettijohn, and J. H. Tench for Florida Railroad Commission; Frank E. Harrison, jr., for State Road Department of Florida, Board of Commissioners of State Institutions, Floridin County, and City of Tallahassee, Fla.; Geo. Butler and M. C. Moore for Mississippi Railroad Commission; Amos A. Betts, Loren Vaughn, E. A. Howe, L. G. Reif, and Charles E. Blaine for Arizona Corporation Commission; J. F. Shaughnessy for Nevada Public Service Commission; J. M. Devers for Oregon State Highway Commission; C. M. Thomas and A. F. Harvey for Public Utilities Commission of Oregon; E. E. Corfman for Public Utilities Commission of Utah; F. Chatterton for Public Service Commission of Wyoming; John H. Dunbar, C. R. Lonergan, John C. Hurspool, and Fred K. Baker for Washington Department of Public Works; Francis A. Silver for Board of Railroad Commissioners of Montana; J. D. Rigney, M. Reese Hattabaugh, Bert L. Penn, Maurice H. Greene, and Fred J. Babcock for Public Utilities Commission of Idaho; Arthur T. George, Ira H. Rowell, Roderick B. Cassidy, and W. P. Geary for California Railroad Commission; C. A. Ross, Hugh LaMaster, and C. A. Sorenson for State of Nebraska; Clarence L. Ireland for State of Colorado; Henry N. Benson, John F. Bonner, O. P. B. Jacobson, Frank W. Matson, Christian J. Laurisch, and L. R. Bitney for State of Minnesota; and Minnesota Railroad and Warehouse Commission; V. E. Smart for Missouri Public Service Commission; E. H. Hatcher, C. W. Steiger, I. C. Peterson, and Wylie McNeal for Public Service Commission of Kansas; Philip H. Porter for Public Service Commission of Wisconsin, and various Wisconsin industries; William F. Ehmann for Public Service Commission of Wisconsin; Herman L. Bode, J. J. Murphy, and D. L. Kelley for State of South Dakota; J. H. Henderson, C. B. Ellis, and W. F. Parsons for Board of Railroad Commissioners of Iowa; Ben C. Larkin, C. W. McDonnell, Fay Harding, E. M. Hendricks, F. P. Aughnay, and Rex E. Willard for Board of Railroad Commissioners of North Dakota; Reece Caudle, L. R. Wood, and A. D. Beals for Arkansas Railroad Commission; C. B. Bee and H. H. Dunlap, jr., for Traffic Department of Oklahoma Corporation Commission.

James M. Curley, mayor, for city of Boston, Mass.; Samuel Silverman and Johnston B. Campbell for Boston, Mass., Port Authority; W. H. Chandler for Merchant's Association of New York, N. Y., and New York State Chamber of Commerce with re-
193 spect to port differentials; Julius Henry Cohen for Port of New York Authority; T. C. Crouch for Richmond, Va., Chamber of Commerce; Frank S. Davis for Maritime Association of Boston, Mass., Chamber of Commerce; William H. Day for Boston, Mass., Chamber of Commerce, New England Traffic League, and New Bedford, Mass., Board of Commerce; Charles J. Fagg for Newark, N. J., Chamber of Commerce, and New Jersey traffic advisory committee; A. H. Ferguson for New Bedford, Mass., Board of Commerce; John Philip Hill for East Baltimore, Md., Business Men's Association; Charles R. Seal for Baltimore, Md., Association of Commerce; George S. Hobbs for Maine State Chamber of Commerce and Agricultural League; A. P. Lane for Millinocket, Me., Chamber of Commerce and Great Northern Paper Company; Donald O. Moore for Pittsburgh, Pa., Chamber of Commerce; C. M. Mark for Newport News, Va., Chamber of Commerce; M. F. Price for Manufacturing Association of Connecticut, and Hartford Chamber of Commerce; Claude H. Swain for Concord, N. H., Chamber of Commerce; S. H. Williams for Philadelphia, Pa., Chamber of Commerce; Frederick M. Varah for Syracuse, N. Y., Chamber of Commerce; Thomas M. Woodward and T. D. Geoghegan for Southwest Virginia, Incorporated; Howard H. Waldron for Portland, Me., Chamber of Commerce; Andrew H. Brown for Cleveland, Ohio, Chamber of Commerce; A. J. Christiansen for Moline, Ill., Association of Commerce and Illinois District Traffic League; John C. Graham for Jackson, Mich., Traffic Bureau; H. D. Rhodehouse, A. C. Graham, J. C. Argetsinger, and J. V. McMahon for Youngstown, Ohio, Chamber of Commerce; A. B. Coapstick for Indiana State Chamber of Commerce and Indiana Division National Association of Natural Stone Producers; Fred E. Young for South Bend, Ind., Chamber of Commerce; O. B. Eddy for Peoria, Ill., Association of Commerce and Illinois District Traffic League; Samuel Herndon for Cincinnati, Ohio, Chamber of Commerce; H. A. Hollopeter for Terre Haute, Ind., manufacturers; C. E. Hochstedler for Chicago, Ill., Association of Commerce; Herbert J. Campbell and J. S. Brown for Chicago, Ill., Board of Trade; Clare B. Tefft for Toledo, Ohio, Chamber of Commerce; John A. Forshey for Toledo, Ohio, Board of Trade; Thomas E. Grady and John A. O'Rourke for Miami, Fla., Rate & Traffic Board, Broward Port Authority, Broward County Rate & Traffic Board; T. C. Elliott for Interior Florida Traffic Bureau and Florida League of Municipalities; E. J. Cosgrove, jr., for city of St. Petersburg and Pinellas County, Fla.; Joseph H. Donnell for Tampa, Fla., Chamber of Commerce, Tampa Traffic Association, and Florida League of Municipalities; A. F. Vandegrift for Louisville, Ky., Board of Trade; T. M. Henderson

for Traffic Bureau of Nashville, Tenn.; H. A. Hopkins for Anniston, Ala., Traffic Bureau and United Chambers of Commerce; C. E.
194 Jones for Birmingham, Ala., Traffic Association; M. M. Caskie and J. D. Oliver for Montgomery, Ala., Chamber of Commerce and Alabama Farm Bureau Federation; J. O. Cromwell for Macon, Ga., Chamber of Commerce; Thos. J. Burke for Charleston, S. C., Traffic Bureau and Southern Traffic League; Edgar Moulton for New Orleans, La., Joint Traffic Bureau; J. C. Murray for Little Rock, Ark., Chamber of Commerce and Arkansas Cotton Trade Association; Homer J. Conley for Fort Smith, Ark., Freight Bureau; I. B. Bentley for Oklahoma City, Okla., Jobbers & Manufacturers' Association, and Oklahoma City Chamber of Commerce; Ed P. Byars for Fort Worth, Tex., Chamber of Commerce, Fort Worth Freight Bureau, and Texas Wholesale Fruit & Vegetable Dealers' Association; E. R. Tanner for New Mexico State Farm Bureau, El Paso, Tex., Freight Bureau, and El Paso Chamber of Commerce; E. R. Tanner and D. H. Berry for West Texas Chamber of Commerce and San Angelo Board of City Development; S. J. Cole for Amarillo, Tex., Chamber of Commerce, Amarillo Board of City Development, Chamber of Commerce of Levelland, Canadian, Sherman County, Cattle County, Hereford, and Clarendon, Tex.; J. W. Chatham for East Texas Chamber of Commerce; Dudley B. Foy for Wichita Falls, Tex., Chamber of Commerce, and Wichita Falls Petroleum Traffic Association; U. S. Pawkett for San Antonio, Tex., Freight Bureau, San Antonio Chamber of Commerce, Winter Garden Chamber of Commerce, and South Texas Chamber of Commerce; A. L. Reed for Dallas, Tex., Chamber of Commerce; L. M. Shepardson for Waco, Tex., Chamber of Commerce; E. H. Thornton for Chamber of Commerce & Cotton Exchange of Galveston, and Texas City, Tex., Board of Trade; A. E. Hueneryager for Zion, Ill., Institutions and Industries, Incorporated; John R. Davy for Sheboygan, Wis., Association of Commerce; L. E. Luth for Winona Association of Commerce, and LaCrosse, Wis., Chamber of Commerce; C. C. Campbell for Oshkosh, Wis., Chamber of Commerce; H. W. Gehrke for Milwaukee, Wis., Association of Commerce; Herman Mueller for St. Paul, Minn., Association of Commerce, and shippers of St. Paul, Minn.; Fred S. Keiser for Duluth, Minn., Chamber of Commerce; Chas H. Winslow for Kalamazoo, Mich., Chamber of Commerce; Leo E. Golden for Grand Rapids, Mich., Association of Commerce, Grand Rapids Furniture Manufacturers Association, Grand Rapids Coal Merchants Exchange, Burlington, Iowa, Shippers Association, Tell City, Ind., Traffic Association, Hannibal, Mo., Traffic Association, National Retail Furniture Association, and Iowa Malleable Iron Company; Geo. M. Cummins for Davenport, Iowa, Chamber of Commerce; W. H. Fitzpatrick for St. Joseph, Mo., Chamber of Commerce; S. W. W. Carr for Aberdeen, S. Dak., Chamber of Commerce; H. M. Richards for
195 Hutchinson, Kans., Chamber of Commerce; George E. Hogle for Hutchinson, Kans., Board of Trade Association; A. M. Corp for Wichita, Kans., Chamber of Commerce, Kansas Chamber

of Commerce, and Wichita Union Stock Yards Company; C. F. Real for Topeka, Kans., Chamber of Commerce; F. P. Willette for Atchison, Kans., Chamber of Commerce; H. M. Hancock for Salina, Kans., Chamber of Commerce; H. R. Brashear for Los Angeles, Calif., Chamber of Commerce; Hal Remington for San Francisco, Calif., Chamber of Commerce; Thomas S. Loutitt and J. C. Sommers for Stockton, Calif., Chamber of Commerce; Edwin G. Wilcox for Oakland, Calif., Chamber of Commerce; E. H. Walker for Reno, Nev., Chamber of Commerce; J. H. Tedrow for Kansas City, Mo., Chamber of Commerce and various industries at Kansas City.

Luther M. Walter, R. C. Fulbright, W. J. Mathey, R. W. Poteet, Chas. R. Seal, H. J. Wagner, W. H. Chandler, W. H. Day, and Herman Mueller for National Industrial Traffic League; Henry J. Balzer and Russell G. Stidolph for National Traffic Association; Milton P. Bauman for New Jersey traffic advisory committee, and New Jersey Industrial Traffic League; William J. Mathey for Shippers Conference of Greater New York; G. Coe Farrier for Allied Commercial Bodies of Philadelphia; J. M. Davison for commercial traffic managers of Philadelphia; J. J. Cummings for New Hampshire Manufacturers' Association; Morris W. Ford and John J. Hickey for Manufacturers Association of Connecticut, Incorporated; Morgan Richards for Selma, Ala., Traffic Bureau; Harry T. Moore and E. L. Hart for Atlanta Freight Bureau; Charles E. Cotterill, Joseph Hopkins, and William Ward, jr., for Southern Traffic League; W. B. Kreuger for Piedmont Southern Freight Bureau; I. M. Bailey and W. S. Creighton for North Carolina Traffic League; H. J. Wagner and H. V. C. Wade for Norfolk Port Traffic Commission; J. B. Jones for Southside Virginia Just Freight Rate Association; H. E. Manghum for Virginia Shippers' Association; F. C. Hillyer for Jacksonville, Fla., Traffic Bureau, Brunswick, Ga., Traffic Bureau, United States Fisheries Association, Cast Stone Institute, Canadian Paint, Oil & Varnish Association, Naval Stores Industries of South Atlantic States, McLaren Rubber Company, and certain rice mills and rice producers; Geo. M. Cummins for Illinois District Traffic League; R. J. Dellinger for Western Stoneware Company, and Illinois District Traffic League; Geo. M. Cummins and L. E. Behrens for Muscatine Shippers Association; Fytte & Clarke, David R. Clarke, James L. Donnelly, and R. I. Pierce for Illinois Manufacturers Association; C. E. Elerick for Cadillac, Mich., Manufacturers Exchange; R. I. Pierce for Manufacturers Association of Chicago Heights; Frank Leffingwell for Southwestern Industrial Traffic League and
196 Texas Industrial Traffic League; F. E. Potts for Helena, Ark., Traffic Bureau; W. A. Curtin for Portland Traffic & Transportation Association; Bert L. Baker for Wenatchee Valley Traffic Association; Ivan L. Plette, for Yakima Valley Traffic & Credit Association; William P. Ellis for Yakima Valley Traffic & Credit Association, Wenatchee Valley Traffic Association, Hood River Traffic Association, Rogue River Valley Traffic Association, and Fruit Growers' League; G. C. Early, J. S. Earley, and E. C. Fanbert for

Utah Shippers Traffic Association; Frank M. Hill for Fresno Traffic Association; Wm. C. McCulloch for Portland, Oreg., Traffic & Transportation Association.

R. C. Allen for Lake Superior Iron Ore Association; E. S. Ballard for Lake Superior Iron Ore Association; C. T. Bradford for International Harvester Company and Wisconsin Steel Company; William W. Collin, jr., for Jones & Laughlin Steel Corporation; E. M. Cole for American Cast Iron Pipe Company, Alabama Iron & Steel Shippers Conference, and Cast Iron Pipe Committee; J. M. Davison for American Pulley Company, Moore & White Company, Bond Foundry & Machine Company, Standard Pressed Steel Company, T. B. Woods Sons Company, and Rogersford Foundry & Machine Company; E. O. Foubert for Pacific States Cast Iron Pipe Company of Provo, Utah; W. J. Hammond for Inland Steel Company; J. H. Hiltner for United States Pipe & Foundry Company; J. C. Hunting for American Chain Company, Incorporated, and associate companies; W. B. Lewis for Sloss Sheffield Steel & Iron Company; F. M. Mason for Lukens Steel Company; Roy A. McCaffrey for United States Pipe & Foundry Company; J. D. Oliver and A. J. Ribe for Alabama Iron & Steel Shippers Conference, Southern Association of Stone Manufacturers, Birmingham Slag Company, and Montgomery Gravel Company, and others; Thaxton Richardson for Carolina Steel & Iron Company; Edwing H. Scott for Andrews Steel Company, Newport Rolling Mill Company, Globe Iron Roofing & Corrugating Company, and Hardy Burlingham Coal Company; A. B. Tanner for Lake Superior Iron Ore Association; E. E. Williamson for Andrews Steel Company, Newport Rolling Mill Company, Globe Iron Roofing & Corrugating Company, and Hardy Burlingham Coal Company.

H. O. Berger for Western Washington log shippers; Frank Carnahan for Southern Hardwood Traffic Association and affiliated companies; Wilson Compton for National Lumber Manufacturers' Association; Clapp, Elmquist, Briggs, Gilbert, Macartney for Weyerhaeuser interests; Fayette B. Dow for American Veneer Package Association and Standard Container Manufacturers' Association; Roy H. Dahlberg for Edham Shingle Company; J. A. Edgecumbe for Edham Shingle Company; R. C. Fulbright for Luther M. Walter, R. C. Fulbright, W. J. Mathey, R. W. Poteet, Chas. R. Seal, H. J. Wagner, W. H. Chandler, W. H. Day, and Herman Mueller for National Industrial Traffic League; Henry J. Balzer and Russell G. Stidolph for National Traffic Association; Milton P. Bauman for New Jersey traffic advisory committee, and New Jersey Industrial Traffic League; William J. Mathey for Shippers Conference of Greater New York; G. Coe Farrier for Allied Commercial Bodies of Philadelphia; J. M. Davison for commercial traffic managers of Philadelphia; J. J. Cummings for New Hampshire Manufacturers' Association; Morris W. Ford and John J. Hickey for Manufacturers Association of Connecticut, Incorporated; Morgan Richards for Selma, Ala., Traffic Bureau; Harry T. Moore and

E. L. Hart for Atlanta Freight Bureau; Charles E. Cotterill, Joseph Hopkins, and William Ward, jr., for Southern Traffic League; W. B. Kreuger for Piedmont Southern Freight Bureau; I. M. Bailey and W. S. Creighton for North Carolina Traffic League; H. J. Wagner and H. V. C. Wade for Norfolk Port Traffic Commission; J. B. Jones for Southside Virginia Just Freight Rate Association; H. E. Manghum for Virginia Shippers' Association; F. C. Hillyer for Jacksonville, Fla., Traffic Bureau, Brunswick, Ga., Traffic Bureau, United States Fisheries Association, Cast Stone Institute, Canadian Paint, Oil & Varnish Association, Naval Stores Industry of South Atlantic States, McLaren Rubber Company, and certain rice mills and rice producers; Geo. M. Cummins for Illinois District Traffic League; R. J. Dellinger for Western Stoneware Company, and Illinois District Traffic League; Geo. M. Cummins and L. E. Behrens for Muscatine Shippers Association; Fytte & Clarke, David R. Clarke, James L. Donnelly, and R. I. Pierce for Illinois Manufacturers Association; C. E. Elerick for Cadillac, Mich., Manufacturers Exchange; R. I. Pierce for Manufacturers Association of Chicago Heights; Frank Leffingwell for Southwestern Industrial
196 Traffic League and Texas Industrial Traffic League; F. E. Potts for Helena, Ark., Traffic Bureau; W. A. Curtin for Portland Traffic & Transportation Association; Bert L. Baker for Wenatchee Valley Traffic Association; Ivan L. Plette, for Yakima Valley Traffic & Credit Association; William P. Ellis for Yakima Valley Traffic & Credit Association, Wenatchee Valley Traffic Association, Hood River Traffic Association, Rogue River Valley Traffic Association, and Fruit Growers' League; G. C. Earley, J. S. Earley, and E. C. Fanbert for Utah Shippers Traffic Association; Frank M. Hill for Fresno Traffic Association; Wm. C. McCulloch for Portland, Oreg., Traffic & Transportation Association.

R. C. Allen for Lake Superior Iron Ore Association; E. S. Ballard for Lake Superior Iron Ore Association; C. T. Bradford for International Harvester Company and Wisconsin Steel Company; William W. Collin, jr., for Jones & Laughlin Steel Corporation; E. M. Cole for American Cast Iron Pipe Company, Alabama Iron & Steel Shippers Conference, and Cast Iron Pipe Committee; J. M. Davison for American Pulley Company, Moore & White Company, Bond Foundry & Machine Company, Standard Pressed Steel Company, T. B. Woods Sons Company, and Rogersford Foundry & Machine Company; E. O. Foubert for Pacific States Cast Iron Pipe Company of Provo, Utah; W. J. Hammond for Inland Steel Company; J. H. Hiltner for United States Pipe & Foundry Company; J. C. Hunting for American Chain Company, Incorporated, and associate companies; W. B. Lewis for Sloss Sheffield Steel & Iron Company; F. M. Manson for Lukens Steel Company; Roy A. McCaffrey for United States Pipe & Foundry Company; J. D. Oliver and A. J. Ribe for Alabama Iron & Steel Shippers Conference, Southern Association of Stone Manufacturers, Birmingham Slag Company, and Montgomery Gravel Company, and others; Thaxton Richardson for

Carolina Steel & Iron Company; Edwing H. Scott for Andrews Steel Company, Newport Rolling Mill Company, Globe Iron Roofing & Corrugating Company, and Hardy Burlingham Coal Company; A. B. Tanner for Lake Superior Iron Ore Association; E. E. Williamson for Andrews Steel Company, Newport Rolling Mill Company, Globe Iron Roofing & Corrugating Company, and Hardy Burlingham Coal Company.

H. O. Berger for western Washington log shippers; Frank Carnahan for Southern Hardwood Traffic Association and affiliated companies; Wilson Compton for National Lumber Manufacturers' Association; Clapp, Elmquist, Briggs, Gilbert, Macartney for Weyerhaeuser interests; Fayette B. Dow for American Veneer Package Association and Standard Container Manufacturers' Association; Roy H. Dahlberg for Edham Shingle Company; J. A. Edgecumbe for Edham Shingle Company; R. C. Fulbright
197 for Southern Pine Association, Phelps Dodge Corporation, and Calumet & Arizona Mining Company; Hugh A. Gillis for Western Pine Manufacturers' Association; R. J. Henderson for National Pole & Treating Company; Irwin Huseby for Northwestern Lumbermen's Association; A. Larsson for California Pine Box Distributors, California Redwood Association, California White & Sugar Pine Manufacturers' Association, Red River Lumber Company, American Box Company, and other pine producers in southern Oregon and California; A. G. T. Moore for Southern Pine Association; William C. McCulloch and William B. Adams for West Coast Lumbermen's Association, Portland Traffic & Transportation Association, Red River Lumber Company, California Lumbermen's Association, California White & Sugar Pine Association, McCloud River Lumber Company, and California Pine Box Distributors; J. V. Norman for Southern Hardwood Traffic Association, Property Owners Committee, and West Kentucky Coal Bureau; Walter A. Powers for Main Lumbermen & Land Owners' Association; H. N. Proebstel and Wm. B. Greeley for West Coast Lumbermen's Association; J. H. Townsend for Southern Hardwood Traffic Association, and Hardwood Manufacturing Institute; W. W. Weller for Weyerhaeuser Timber Company; S. J. Wettrick for western lumber interests and North Pacific Millers Association.

A. S. Boden for Western Pennsylvania Coal Traffic Bureau; Ernest S. Ballard and D. F. Hurd for Ohio Lake Cargo Coal Rate Committee, and Ohio Coal Producers Freight Rate Committee; C. B. Cardy and L. F. Malum for Springfield, Ill., Coal Traffic Bureau; Joseph O'Toole and Ira C. Cochran for various coal associations; William B. Faulkner for Donner-Hanna Coke Corporation; August G. Gutheim for Central Pennsylvania Coal Producers Association, Western Pennsylvania Coal Traffic Bureau, C. Reiss Coal Company, and Milwaukee Western Fuel Company; J. F. Graves for Consolidated Coal Company; T. T. Harkrader for American Tobacco Company; Arthur Hale for Coal Exporters Association of United States; John J. Hickey for Anthracite Coal Operators Association and Man-

ufacturers Association of Connecticut, Incorporated; S. C. Higgins for New River Coal Operators' Association; Stanley B. Houck for Twin City Coal Exchange, Incorporated; C. P. Hoy for Fifth & Ninth Districts Coal Traffic Bureau; W. A. Jones for Central Pennsylvania Coal Producers Association; Kirkland, Fleming, Green & Martin for Chicago Coal Merchants Association; Wesley E. Keller for Northwestern Retail Coal Dealers' Association; A. M. Liveright for Central Pennsylvania Coal Producers' Association, and others; John C. Ryan for Coal Merchants Educational Bureau; F. O. Sandstrom for Colorado & New Mexico Coal Operators' Associa-
198 tion; Fred H. Sturm for Montana Commercial Coal Operators, Anaconda Copper Mining & Coal Department, Blair Collins Company, Jeffries Coal Mining Company, Montana Coal & Iron Company, and Roundup Coal Mining Company; C. E. Warner and H. J. Goudelock for Midwest Coal Traffic Bureau; W. Y. Wildman for Illinois Coal Traffic Bureau.

Michael J. Anuta for Menominee Chamber of Commerce, Marinette Industrial Board, and Badger Paper Mills, Incorporated; J. E. Bryan and C. R. Hillyer for Wisconsin Paper & Pulp Manufacturers Traffic Association; W. B. Dalton for Nekoosa Edwards Paper Company; Charles E. Bell and C. C. Furgason for West Virginia Pulp & Paper Company; Laurence F. Daspit for Brown Paper Mill Company, Incorporated; James F. Doughterty for Michigan Paper Mills Traffic Association; F. L. Grady for Mead Paper board Corporation; R. J. Henderson for Minnesota & Ontario Paper Company; F. M. Ives for National Association of Cotton Manufacturers; J. H. Krueger for Watab Paper Company; H. A. Manning for Atlanta Paper Company; Andrew P. Lane for Great Northern Paper Company, St. Croix Paper Company, Madison, Me., Chamber of Commerce, and Millinocket, Me., Chamber of Commerce; Parker McCollester and Lord, Day & Lord for American Newspaper Publishers Association, Publishers Association of New York City, and American Zinc Institute; William J. Mathey for American Newspaper Publishers Association; O. J. McSwain for Albermarle Paper Manufacturing Company, Albemarle Chesapeake Company, and Chesapeake Corporation; John J. Seid for Pacific Pulp & Paper Traffic Association, and Pacific Coast Association of Pulp & Paper Manufacturers; Sheldon E. Wardwell and Andrew P. Lane for Great Northern Paper Company, St. Croix Paper Company, Madison Chamber of Commerce, and Millinocket, Me., Chamber of Commerce; F. M. Ives and C. L. Whittemore for New England Paper & Pulp Traffic Association; W. N. Webb for Celotex Company.

Edson Abel for California Farm Bureau Federation; Charles O. Busick for California State Grange; Charles E. Blaine for American National Livestock Association and Apache Powder Company; E. S. Briggs for American Fruit & Vegetable Shippers Association; William C. Bewley for Georgia Peach Growers Exchange; George C. Conn for Fruit Industries, Limited; Edw. G. Davies for fruit and vegetable shippers of Mississippi Valley; H. A.

Davis for Boston Wool Trade Association; A. H. Priest, Dayton Moses, and H. D. Driscoll for southwestern livestock interests; Wm. B. Daly for Kroger Grocery & Baking Company; J. S. Earley for Utah State Beekeepers Association, Utah Manufacturers Association, Utah Horticultural Association, Utah State Farm
199 Bureau, Utah Poultry Producers Cooperative Association, and Ogden Grain Exchange; E. J. Forman for Los Angeles Grain Exchange; Arthur M. Geary for Farm Rate Council, North Pacific Grain Growers, Incorporated, Eastern Oregon Wheat League, and Northwestern Livestock Shippers Traffic League; T. D. Geoghegan for West Virginia Live Stock Growers & Shippers, and R. W. Burch, Incorporated; R. M. Gililland for American Wholesale Grocer's Association, Virginia State Horticultural Society, and West Virginia Horticultural Society; C. O. Cornwell, George E. Farrand, and Karl D. Loos for California Citrus League; Dow, Crane & Lohnes for Joint Council of International Apple Association, and other fruit interests; C. R. Hillyer and Waldo P. Johnson for Live Poultry Shippers Association; S. T. Henson for Feed Manufacturers' Traffic Committee; H. R. Higgins for Dried Fruit Association of California; Donald Kirkpatrick for American Farm Bureau Federation; McKinley Huntington for Oregon Turkey Growers; Geo. C. Lambert for various grain cooperatives; Slaughter Linthicum for Thompson-Weinman & Company, Incorporated, and Southeastern Peanut Association; J. H. Mercer for Kansas Live Stock Association; C. B. Moore, Robert M. Barker, and Hal F. Wiggins for Western Growers Protective Association of California & Arizona; C. R. Marshall and J. Curtis Robinson for Growers & Shippers League of Florida; F. R. Marshall, H. W. Prickett, and Milton H. Love for National Wool-growers Association; Robert Mayer and A. J. Stone for Dallas Cotton Exchange; John E. McCurdy for Poultry Producers of Central California; Wm. J. Maloney for Corn Exchange; Allan P. Matthew, John O. Moran, F. W. Mielke, J. Richard Townsend, and McCutchen, Olney, Mannon & Greene for California Growers' & Shippers' Protective League; F. H. Nesmith for Ralston Purina Company; O. E. Nelson for Denver Alfalfa Milling & Products Company, Lamar Alfalfa Milling Co., Holly Alfalfa Milling Company, and Lamar Chamber of Commerce; Thos. O'Neill for California Vegetable Union; Donald S. Payson for American Seed Trade Association, Southern Seedmen's Association, and Pacific States Seedsmen's Association; H. W. Prickett, Stephen H. Love, and Milton H. Love for Intermediate Rate Association, National Wool Growers Association, and various firms; Lee J. Quasey for National Live Stock Marketing Association; J. Curtis Robinson for Growers & Shippers League of Florida; C. M. Reed for various farm organizations, and 14 national and State organizations; O. W. Sandberg for American Farm Bureau Federation; Anthony E. Sicilia for Midwest Wool Trade Association; E. B. Smith for Sperry Flour Company and California Hay, Grain & Feed Dealers Association; L. H. Stewart for California Arizona Cotton Association; W. R. Scott and J. W. Halloway

200 for Board of Trade of Kansas City, Mo.; J. C. Suttie for National Hay Association and Omaha Hay Association; W. S. Turner for Arkansas Cotton Trade Association; O. W. Tong for Minnesota Canners Association, Maine Potato Growers & Shippers Association, and Northern Potato Traffic Association; Warren H. Wagner, C. O. Dawson, H. W. Davis, and C. A. Heath for Interior Iowa Packers; Raymond Williams and E. J. Theisen for New York State Hay & Grain Dealers' Association.

E. M. Burns for Northwest Canners' Association, Northwest Fruit Barrelers' Association, and Vinegar Manufacturers' Association; Paul E. Blanchard and W. W. Manker for Armour & Company; J. L. Carling for Arbuckle Brothers; Frank M. Cooke for Jacob Dold Packing Company; Jos. C. Colquitt and R. E. Cook for H. J. Heinz Company; C. S. Connolly for Carnation Company of California, and Albers Brothers Milling Company; Edward S. DePass for Evaporated Milk Association; H. D. Driscoll for Oklahoma Millers' Association; M. M. Emmert for Coca Cola Company; J. Harry Covington and Spencer Gordon for National Canners Association; M. A. Gray for H. D. Lee Mercantile Company; C. A. Heath for Rath Packing Company; W. T. Hickerson for American Salt Corporation, Carey Salt Company, and Barton Salt Company; E. T. Hadley for Borden Company; M. S. Hartman for Fairmont Creamery Company; E. H. Hogueland, Thad. L. Hoffman, and I. M. Herndon for Southwestern Millers' League; Irving F. Lyons for Canners League of California, and Utah Canners' Association; R. D. Lytle for North Pacific Millers' Association; M. H. Love for Amalgamated Sugar Company, Holly Sugar Company, Springville-Mapleton Sugar Company, Gunnison Sugar Company, Layton Sugar Company, and Utah-Idaho Sugar Company; B. F. McKennen for Pacific States Butter, Egg, Cheese & Poultry Association; Ralph Merriam for Morton Salt Company; Wm. R. Moore for National Confectioners Association of United States, and Eastern Confectioners' Traffic Bureau; H. V. McNamara for Western Sugar Refinery; G. A. Nimmo for Planters Nut & Chocolate Company, and Suffolk, Va., Chamber of Commerce; V. K. Raymond for National Sugar Refining Company of New Jersey; Fred M. Renshaw and Charles G. Redlich for Jacob Dold Packing Company; P. M. Ripley for American Sugar Refining Company; E. F. Scott for American Association of Creamery Butter Manufacturers, and National Poultry, Butter & Egg Association; Claude E. Street for Florida Grapefruit Canners Association; V. Schaffenburg for Myles Salt Company, Limited, and Bay Chemical Company, Incorporated; F. L. Thomas and H. R. Burr for Wisconsin Canners' Association; W. J. Tomkins for Diamond Crystal Salt Company, Colonial Salt Company,
201 Ohio Salt Company, and Union Salt Company; George Turner for Land of Lakes Creameries; Lynne P. Townsend for New England Retail Grain Dealers' Association; Elmer Westlake and J. G. Breslin for Western Sugar Refinery, and California & Hawaiian Sugar Refining Corporation, Limited; L. Z. Whitback for Great Atlantic & Pacific Tea Company.

J. E. Barnhard for St. Joseph Lead Company, M. M. Caskie for Reynolds Metals Company, Stokeley Brothers & Co., and Fulton Sylphon Company; P. A. Champney for American Can Company; John L. Finerty for American Smelting & Refining Company, and National Sugar Refining Company of New Jersey; H. A. Gray for Eagle Picher Lead Company; Russell G. Lucas for Utah Copper Company, Nevada Consolidated Copper Company, and Utah Chapter, American Mining Congress; William A. Moore for New Jersey Zinc Company, New Jersey Zinc Sales Company, New Jersey Zinc Company (of Pennsylvania), Empire Zinc Company, Mineral Point Zinc Company, and Bertha Mineral Company; Robert E. Quirk for Anaconda Copper Mining Company, International Smelting Company, Inspiration Consolidated Copper Company, Green Cananea Copper Mining Company, and American Brass Company; Walter A. Smith for New Jersey Zinc Company; Frank M. Swacker for New Jersey Zinc Company, New Jersey Zinc Sales Company, Mineral Point Zinc Company, Bertha Mineral Company, Empire Zinc Company, and Chestnut Ridge Railway Company; Luther M. Walter, John S. Burchmore, and Nuel D. Belnap for National Crushed Stone Association, Tri-State Zinc & Lead Ore Producers Association, Eagle-Picher Lead Company, and St. Joseph Lead Company; S. L. Yerkes for Alabama Mining Institute.

Benjamin J. Brooks for National Granite Commission; Homer J. Conley for Fort Smith Traffic Bureau and Carthage Marble Corporation; H. H. Bieze for Indiana Division National Association of Natural Stone Producers; J. Raymond Hoover for Vermont Marble Company; Frank H. Luther for Washington Building Lime Company, and Standard Lime & Stone Company; J. Prince Webster for Georgia Limerock Company; E. E. Williamson for Limestone Products Corporation of America; V. E. Anderson for southwestern glass interests; J. A. Bernier for Kerr Glass Manufacturing Corporation, Alex. H. Kerr & Company, Incorporated, and Kerr, Hubbard & Kelley; Jos. C. Colquitt and J. C. Magness for Glass Container Association of America; James C. Davie for Illuminating Glassware Guild; Jacob Mauiss for Phillips Glass Corporation, and Mission Orange, Incorporated; H. D. Musick for Blue Ridge Glass Corporation, and Kingsport Press, Incorporated.

202 George J. Bolender for Paper Makers Chemical Corporation, C. K. Williams & Company, Vera Chemical Company of Canada, Limited, George S. Mepham & Company, Superior Pine Products Company, and Seminole Pigments Company; E. C. Blanchard, John R. Meeks, and L. B. Rockwell for North Alabama Utilities Company, Decatur Fertilizer Company, Farmers' Fertilizer Company, Chase Nursery Company, Dixie Syrup Company, Alabama Asphaltic Limestone Company, Dixie Minerals Corporation, and Ware Brothers Agency; Harold R. Hendrick for Cincinnati Chemical Works, Incorporated; M. H. Haertel for Wood Chemical Institute, Incorporated; P. L. Hollingsworth for American Potash & Chemical Corporation, and Three Elephant Borax

Corporation; John H. C. Kirk for Darling & Company; Harry C. Ames and Warren N. Watson for Manufacturing Chemists Association of America; A. D. Whittemore, C. A. Fulton, and F. G. Moore for Phosphate American Agricultural Corporation, Southern Phosphate Corporation, Phosphate Mining Company, Coronet Phosphate Company, and Florida Pebble Phosphate Export Association; T. J. Burke, D. A. Dashiell, J. H. Hunt, F. G. Moore, F. B. Porter, and A. D. Whittemore for numerous fertilizer manufacturers and shippers; A. J. Young for International Agricultural Corporation.

E. N. Adams for Tulsa, Okla., interests; R. C. Allen for Nogleby-Norton Company; J. F. Atwater for American Hardware Corporation; Smith W. Brookhart for himself; E. A. Barror for Valvoline Oil Company; Nuel D. Belnap for National Crushed Stone Association; C. A. Barinowski for Birmingham Slag Company, Montgomery Gravel Company, Woodstock Slag Corporation, Tennessee Valley Sand & Gravel Company, and Stockbridge Stone Company; C. S. Bather for Rockford Manufacturers & Shippers Association, Rockford Furniture Manufacturers Association, National Association of Furniture Manufacturers, and Better Bedding Alliance of America; H. L. Burch for Kentucky Rock Asphalt Company; W. S. Barton for Ash Grove Lime & Portland Cement Company; W. A. Cook for Merry Brothers Brick & Tile Company; Joseph W. Connolly for Ford Motor Company; Jos. C. Colquitt and J. T. Ryan for Southern Furniture Manufacturers' Association; H. L. Crowder for Pennsylvania Salt Manufacturing Company; Geo. M. Cummins and A. R. Ebi for Deere & Company; W. G. Clayton, jr., for Buffalo Holt Company and New System Traffic Service; Edward H. Cooley for Massachusetts Fishing Industry; C. W. Chears for cotton mills; Carl R. Cunningham and L. O. Kuisherly, jr., for American Cotton Manufacturers Association, Cotton Manufacturers Association of North Carolina, and Cotton Manufacturers Association of South Carolina; Willis Crane for 22 oil-refining companies;
203 Lee R. Cowles for Kansas Oil Traffic Committee and White Eagle Oil Corporation; L. N. Conyers for Pennsylvania Petroleum Company; Fayette B. Dow and Dow, Crane & Lohnes for National Sand & Gravel Association, and various other sand and gravel associations; Benj. S. Dowdell for Hummel-Ross Fibre Corporation; George A. Duffy for Walton & Company, Incorporated; Roy H. Dahlberg for Shevlin, Carpenter & Clarke Company; C. L. Denk, jr., for Fulton Bag & Cotton Mill; J. H. Davenport for Wichita Falls Petroleum Traffic Association; C. F. Dowd for Tidal Refining Company, Tidal-Western Oil Corporation, Wilcox Oil & Gas Company, and Cushing Refining & Gasoline Company; C. D. Dooley for Colgate Palmolive Peet Company; E. W. Dallman for Blatz Brewing Company; F. A. Doebber for Citizens Gas Company of Indianapolis.

W. F. Everding for Brown Company; M. W. Eismann for Manufacturers Association of Erie; R. A. Ellison for Associated Producers of Cereal Beverages and Burger Brothers Company; Bernard L.

Glover for Iola Cement Mills Traffic Association, Standard Briquette Fuel Company, Phenix Marble Company, Industrial Paper Company, and Missouri Mapes Company; E. S. Gubernator and F. E. Paulson for Lehigh Portland Cement Company and other cement companies; James S. Gill for Upson Company, and Lockport Board of Commerce; J. S. Geiger for United States Brewing Company of Chicago; D. P. Harris for Southwest Clay Products Institute; A. B. Hamilton for United Brick & Tile Company; E. W. Hollingsworth and R. J. Boyd for California Manufacturers Association; William G. Higgins for Santa Cruz Portland Cement Company; F. A. Henry for Dolese Brothers Company; Robin Hood for National Cooperative Council; Frank R. Hale for Structural Clay Tile Association; L. Jones for National Malt Products Manufacturers' Association; L. A. Keck for M. K. Goetz Brewing Company, and Goetz Sales Company.

Wilbur LaRoe, jr., and Frederick E. Brown for Associated Industries of New York State, Port of New York Authority, Texas Gulf Sulphur Company, and International Paper Company; W. E. Long for Sterling, Ill., Manufacturers' Association; W. H. Lovesy for Utah Oil Refining Company; W. J. M. Lahl for Radio Manufacturers' Association, Incorporated; A. G. Linneman for Associated Producers of Cereal Beverages and Burger Brothers Company; W. Gordon McKelney for Tennessee Manufacturers Association, Nashville, Tenn.; Robert J. McBride for Federal American Cement Tile Company; H. L. McReynolds for White Eagle Oil Corporation; F. B. McElroy for Whitacre-Greer Fireproofing Company; W. S. McCarthy for Intermediate Rate Association, and Salt Lake Hardware Company T. W. Mackey for Western Shade Cloth Com-
204 pany; J. George Mann for Northrup King & Company; L. F. Mongeon for National Retail Dry Goods Association; H. F. Masman for National Association of Waste Material Dealers, and Waste Paper Institute; Thomas B. Martin for Independent Gravel Company; William Martin for Philadelphia Quartz Company; G. O. Nickel for Bartlett Collins Company, Sapulpa, Okla.; J. K. Moore and J. T. Hiers for American Cotton Cooperative Association, and Staple Cotton Cooperative Association; E. L. Nichols for United States Fisheries Association; Cleveland A. Newton for Mississippi Valley Association.

Arthur E. Pearson for Hollingsworth & Whitney Company; J. F. Potts for Kelley Island Lime & Transport Company; Louis M. Porter for Fruit Dispatch Company; R. W. Poteet for Stanley Works; Morris Prince for North Carolina Hosiery Manufacturers Traffic Association, and North Carolina Full Fashioned Hosiery Manufacturers; F. H. Ramsdell for New Department Manufacturing Company; F. M. Russell for Steel Office Furniture Institute and Metal Furniture Traffic League; E. C. Richmond for Furniture Corporation of America, Limited, and Schlesser Brothers; Ralph Edgar Riley for Illinois Silica Sand Traffic Bureau, Illinois Brick Company, and Chicago Brick Company; W. E. Rosenbaum for

cereal-beverage manufacturers and certain lime manufacturers; W. W. Sprague for National Mortar & Supply Company and Woodville Lime Products Company; Lowe P. Siddons for Brunswick Radio Corporation; C. W. Strickland for Cone Export & Commission Company; C. T. Smith for Smith Brothers Nursery Company; R. S. Sawyer for Associated Jobbers & Manufacturers Association of Los Angeles, Calif.; W. G. Stone for Sacramento Wholesalers & Manufacturers Association; W. K. Sanderson for himself; L. D. Snow, E. Richardson, and Manghum & Manghum for Lever Brothers; E. George Seidle for Armstrong Cork Company; Charles Sizemore for American Association of Nurserymen; N. B. Woodsum for Berst-Forster-Dixfield Company.

Herbert Thompson and Jos. C. Colquitt for Union Carbide Company; M. M. Twehig for Willard Storage Battery Company; E. W. Thompson for Interstate Cotton Oil Refining Company; Beecher W. Waltermire for Ohio Paving Brick Manufacturers Association and National Paving Brick Manufacturers Association; John L. Warren for Fruit Dispatch Company; I. H. Ware and George E. Willey for United States Fisheries Association; J. Prince Webster for Georgia Lime Rock Company; C. E. Widell for Tennessee Products Corporation; Fred M. Williams and George W. McCollum for selves and Consuming Public Citizens League of Chattanooga; Walker Wilson for Cosden Oil Company and Richardson Refining Company; E. DeL. Wood for Chattanooga Manufacturers Asso-
205 ciation; R. O. Youngerman for Mason City Brick & Tile Company; R. O. Youngerman, Frank R. Hale, and H. A. Hollopeter for Structural Clay Tile Association.

REPORT OF THE COMMISSION

BY THE COMMISSION:

By an application filed June 17, 1931, carriers by railroad and by water throughout the country, subject to our jurisdiction, asserting that an emergency exists, seek authority [1] to make a general increase of 15 per cent in their all-rail and rail-water interstate and international freight rates and charges.[2] By order of June 19, we directed the carriers to clarify the application in certain respects. In particular, they were asked whether they were prepared, if the authority sought were granted, to initiate increases of all existing freight rates of the measure proposed in their application, or, if not, what specific exceptions they proposed to make. This inquiry was thus prefaced:

[1] Specifically, the carriers seek special permission to file percentage supplements to existing tariffs increasing all freight rates and charges 15 per cent, except in certain cases where specific tariffs on substantially the same basis, complying with the ordinary rules of tariff publication, may be filed. They ask, also, that we conduct such investigation as may enable us to determine whether such tariffs should be permitted to become effective without suspension, and that we modify orders outstanding so that they will not prevent publication of the proposed increases.

[2] Except rates on raw milk and cream, handled principally in passenger or milk trains, and demurrage or track storage charges. The carriers also propose to adjust the increased rates so as to preserve existing port differentials on export and import traffic, and certain differentials on coal and coke within the eastern group.

"The commission having in mind the fact that the carriers are equipped with traffic departments whose duty it is, among other things, to keep fully informed in regard to industrial and competitive conditions in the districts served by their lines and the ability of the traffic to bear existing or higher freight charges, and assuming that no increases in freight rates would be initiated which, in the opinion of those departments, the traffic can not reasonably bear or which for any other cause hold forth no substantial promise that revenue will thereby be increased, and being of the opinion that it is of prime importance, under present conditions, that industries and shippers should not find it necessary to participate in proceedings before the Commission with respect to freight rates, if any there be, which the carriers do not in fact intend to increase even though the authority sought be granted."

On June 24 the carriers replied that they were prepared to increase all freight rates and charges, without exception, in the measure proposed. At the hearings it was made clear that the increases sought, if approv'd, were to apply to (a) all rates in effect on the date of our final order herein, (b) all rates contained in prior tariffs or supplements effective subsequent to the date of such order, and (c) all rates prescribed by us prior to the date of such order to become effective subsequent thereto.

206 Hearings on the application began July 15 and extended into early September. They were held at Washington, D. C., Portland, Me., Atlanta, Ga., Dallas, Tex., Kansas City, Mo., Portland, Oreg., San Francisco, Calif., Salt Lake City, Utah, and Chicago, Ill. There were taken 11,719 pages of testimony, 1,048 exhibits were received, and 656 witnesses heard. Applications for a similar general increase in intrastate rates and charges were pending or proposed before State commissions, and we accordingly invited their cooperation. Most of them accepted, selecting from their number eight representatives,[3] two from the Eastern Group, two from the Southern Group, two from the Western Group, and two from the mountain-Pacific Group. These commissioners sat with us at the hearings and during oral argument, and participated in our deliberations preceding the decision.

THE SUPPORTING EVIDENCE

Applicants' evidence.—The evidence of the carriers is directed for the most part to their revenue or financial needs. It deals with the carriers in the aggregate or according to the three recognized territories, eastern, southern, and western. We shall summarize this evidence briefly. In 1930 the net railway operating income of Class I

[3] W. D. B. Ainey, Chairman, Public Service Commission of Pennsylvania; Herbert W. Trafton, Commissioner, Public Utilities Commission of Maine; Harvey H. Hannah, Chairman, Railroad and Public Utilities Commission of Tennessee; Hugh White, President, Public Service Commission of Alabama; Paul A. Walker, Chairman, Corporation Commission of Oklahoma; A. R. McDonald, Commissioner, Railroad Commission of Wisconsin; William J. Carr, Commissioner, Railroad Commission of California; J. M. Thompson, President, Public Utilities Commission of Idaho.

carriers amounted to $868,878,792, or 3.54 per cent of the value of the property, ascertained by adding to the aggregate value found by us in Increased Rates, 1920, 58 I. C. C. 220, the net cost of additions and betterments made subsequent to that date. Using as a basis the relation of revenues and expenses for the first six months of 1931 to those of 1930, the net railway operating income for 1931, it is estimated, will amount to $553,000,000, or 2.25 per cent upon value as above ascertained. Compared with 1930, in the first six months of 1931 freight revenues decreased 18 per cent, passenger revenues 23.3 per cent, mail 5.4 per cent, express 24.2 per cent, and miscellaneous 18.8 per cent. Operating expenses decreased 17.2 per cent, and to effect this decrease it was necessary to limit maintenance. Using as a basis freight revenues for 1931, so estimated, the 15 per cent increase in rates and charges sought would, if there were no consequent falling-off in traffic, yield an additional $502,000,000 of revenue, which, allowing for income tax and other deductions, would bring net operating income to $985,000,000, or 4.01 per cent on the assumed property value.

207 Evidence was submitted to show that, judged by recognized indices of operation, there has been a steady and large improvement in the economy and efficiency of railroad operations since 1920. No evidence was offered by the carriers bearing on the reasonableness of the wages which they pay, and we refused to receive evidence offered by others in regard to this matter, on the ground that we have no jurisdiction over wages or part in the procedure prescribed by the Federal law for their determination.

The carriers are not seeking the full fair return on value to which they assert that they are entitled by law. They are willing to share with other industries the burden of the general depression. They ask to be relieved of a part of their present burden on the grounds that public regulation prohibits them from sharing to the same extent as private industries in the profits of prosperity, that their present low earnings imperil their credit and hence the stability of an industry on which all others are dependent, and that the increase desired will restore confidence, stimulate buying, and lead the way to a return of prosperity. They further assert that on any conceivable basis of valuation they are falling so far short in their earnings as to make it unnecessary to determine in this proceeding the actual aggregate value of their properties devoted to carrier use. For similar reasons they deem it unnecessary to inquire whether the 5.75 per cent, heretofore fixed by us, is a fair return under present conditions.

The carriers offered no evidence with respect to the rates on any particular commodity or kind of traffic. Other than general assertions in testimony by three presidents, one from each territory, that on much traffic the increased rates would produce revenue substantially in proportion to the percentage sought, they offered no evidence as to the effect which the increase would have on the movement of all or any traffic. They presented no witnesses familiar with traffic

conditions, and resisted the attempts of shippers to call their traffic officers to the stand. It was admitted that it had been found necessary to reduce numerous rates voluntarily to meet competitive conditions and to refrain from taking advantage of all the opportunities to increase freight rates which our decisions have offered. It was also admitted that because of competitive and industrial conditions it would be necessary, if the 15 per cent increase were granted, thereafter to make numerous downward adjustments of rates with a view to holding traffic and avoiding shrinkage in revenue. For this reason it was conceded that a 15 per cent increase in rates would not yield a proportionate increase in revenue, but no estimate of the difference was given. It was testified that the presidents believed
that a substantial increase in revenue would result, and that
208 they had obtained the advice of their traffic officers. Subsequent evidence showed, however, that so far as such advice was formally tendered, it bore only on the form which the increase should take if one were to be sought. No increase in passenger fares is sought, because of the feared effect on traffic and revenue.

Security holders' evidence.—The chief support of the carriers' application was given by two committees[4] representing holders of railroad securities. Their evidence we shall also summarize briefly. It was presented to prove that railroad credit has collapsed, the present situation constituting an emergency of the gravest character; that we are under a legal duty to maintain railroad credit by all means in our power; and that an immediate increase in freight rates and charges is the only practicable method of meeting the emergency, regardless of the future steps required for a permanent solution of the problem of stabilizing railroad credit. Evidence was offered to show that there has been a serious decline in the market value of railroad bonds, and particularly of the overlying and refunding mortgage bonds which, with a few exceptions, are the only medium by which carriers can now hope to raise money for refunding or for new capital expenditures. In the case of the 59 class-I roads having operating revenues of $10,000,000 or over and having overlying bonds outstanding in the hands of the public, such bonds suffered an average decline under the high point of 1930 of 17.6 points to June 1, 1931, and of 28.5 points to August 24. The average income yield to maturity was 4.83 per cent at the 1930 high, 6.94 per cent on June 1, 1931, and 7.66 per cent on August 24. They are, in general, bonds which were, prior to the depression, bought by conservative investors at low interest rates. This decline has taken place at a time when money rates were extraordinarily easy and there was a large and increasing demand for safe bonds, and it has

[4] One committee represented life insurance companies and mutual savings banks. Out of a total of about $4,700,000,000 par value of railroad bonds held by such institutions, this committee spoke for the holders of $3,444,801,000 bonds. The other committee represented large institutional holders of railroad securities, chiefly banks and trust companies holding such securities in a fiduciary capacity but including, also, universities, hospitals, and charitable organizations, fire insurance companies, and casualty, indemnity, and surety companies. The known representation of this committee is over $1,700,000,000 par value of railroad securities, mostly bonds, but this figure is regarded as an underestimate.

been greater than in the case of any comparable class of securities. Bonds which are regarded as safe investments contemporaneously increased in value.

Of a total of $7,562,500,000 railroad bonds now legal for investment by savings banks and trustees, if the New York savings bank standard be applied, the testimony indicates that about $5,877,600,000 are in grave danger of being stricken from the list. To be
209 eligible under this standard, the railroad issuing the bonds must have earned its fixed charges at least 1.5 times during five of the last six fiscal years preceding the investment, and in the fiscal year next preceding. But elimination from the list does not necessarily mean that such bonds, previously acquired, must be sold. In the case of the New York savings banks, the superintendent of banks may order them to be sold, and all holding such bonds in a fiduciary capacity must, in the exercise of a wise discretion, be governed by the legal principles affecting the duty of trustees with respect to investments. Certain railroads of previous unquestioned financial standing will probably fail to earn all their interest requirements this year. Greater deficiencies have been prevented by reductions in operating expense, including deep cuts in maintenance. Along with the impairment in railroad credit has gone a tremendous shrinkage in the value of the equities represented by railroad stocks.

This impairment in railroad credit is ascribed by these committees to the inadequacy of the average rate of return since the passage of the transportation act, 1920; to the decline in the margin of safety for interest on railroad bonds, due chiefly to the disproportionate increase in operating expenses as compared with fixed charges; and to the decline of confidence in the future of the railroads, because of the rapidly increasing competition. Not only does this fall in credit now close normal channels of railroad financing for refunding operations and the raising of new capital, but in the opinion of these committees it threatens the permanent withdrawal of capital from the railroad industry. The shrinkage in the market prices of railroad securities imperils the beneficiaries of trust funds, and also the reserves of conservative financial institutions in a manner tending to intensify the present economic crisis. The committees regard the maintenance of railroad credit as second in importance only to the maintenance of peace and order through government, and as essential to a return of normal economic conditions, railroad service being an indispensable public facility affecting the entire economic life of the Nation. They contend, finally, that the granting of a rate increase is the only practicable method of meeting the existing and immediate emergency, and that no other method has been suggested. They assert that just as, even in a depression taxes must be increased, if that be necessary to support the credit of the government, so railroad rates must be raised if this basic industry be in peril.

Commercial organizations' evidence.—A few commercial organizations definitely favor the increase sought. Those who do not oppose have for the most part maintained an attitude of neutrality.

210 THE QUESTION OF LAW

Before indicating the nature of the opposition, it will be well to consider the contentions of the carriers with respect to the law. Technically, the application is under section 6 of the interstate commerce act for authority to depart from our ordinary rules governing tariff publication, coupled with a request that we now reach the conclusion, after investigation, that if the contemplated tariffs are filed, they will not be suspended. Fundamentally, however, the carriers rely upon the provisions of section 15a(2) reading as follows:

"(2) In the exercise of its power to prescribe just and reasonable rates the commission shall initiate, modify, establish, or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the commission may from time to time designate) will, under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures, and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: *Provided*, That the commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country."

Section 1 (5), which antedates section 15a but was reenacted in the 1920 legislation, requires, among other things, all charges made for any service rendered in the transportation of property to be just and reasonable, and it prohibits and declares unlawful "every unjust and unreasonable charge for such service or any part thereof."

Briefly stated, it is the position of the carriers that section 15a changes our duty to prescribe just and reasonable rates by introducing in the law a new standard for our guidance. It is asserted that under the former law a carrier in a competitive group had no legal protection unless the strongest carrier in the group was in a position successfully to assert confiscation of its property. The rates being competitive, the weaker line had to meet them or go out of the business. The stronger line might not be disposed to assert in the courts its constitutional rights. Even if it were so disposed and succeeded in the assertion, the increase it could secure in the rates would only be that which would bring its own earnings above the line of confiscation of its own property. Such a meaure of relief would fall below, perhaps much below, the measure of the constitutional rights of the weaker lines. Prior to 1920, the argument is that we had dealt with revenue considerations as a factor in just and reasonable

rates, but had not solved the problem of the treatment of groups of railroads in such a way as to maintain their earnings, their credit and their adequacy as component parts of a national system of
211 transportation. Section 15a was designed to remedy that failure. "In substance," according to the carriers, "the constitutional right of a single carrier to a fair return which could not as a practical matter be asserted was extended to the group as a whole and the commission was given a mandate to render the right productive."

Because of the provisions of section 15a, it is contended that rates, otherwise reasonable, perforce become unreasonably low if the general schedule of rates, of which they are a part, produces revenues which in the aggregate fail to attain the results contemplated by the section. Quoting from the carriers' brief, "It is thus apparent that in any case involving the reasonableness of an increase or decrease in the general rate level, the revenue consideration is paramount and controlling." Quoting again, it is said "that the use of the expression 'just and reasonable rates' in section 15a connotes a different meaning from its use elsewhere and recognizes the paramount financial consideration." It is urged that the section is superimposed upon the power to prescribe just and reasonable rates in such a way that if the effect of the exercise of that power is to bring the revenues above or below the statutory level, adjustments of earnings to that level must be made by us through other changes in rates. The words "as nearly as may be" in paragraph (2), according to this view, introduces no discretionary factor, but merely cover the mathematical impossibility of attaining the prescribed standard precisely.

In support of this view the carriers rely chiefly upon Dayton-Goose Creek Ry. v. U. S., 263 U. S. 456. Among the statements in that opinion which are stressed are the following:

"The new act seeks affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country. It aims to give the owners of the railways an opportunity to earn enough to maintain their properties and equipment in such a state of efficiency that they can carry well this burden. To achieve this great purpose, it puts the railroad systems of the country more completely than ever under the fostering guardianship and control of the Commission, which is * * * by a proper division of joint rates, and by fixing adequate rates for interstate commerce, and in case of discrimination, for intrastate commerce, to secure a fair return upon the properties of the carriers engaged. (Page 478.)

"Rates which as a body enable all the railroads necessary to do the business of a rate territory or section, to enjoy not more than a fair net operating income on the aggregate value of their properties therein economically and efficiently operated, are reasonable from the standpoint of the individual shipper in that section. (Page 480.)

"It is clearly unsound to say that the net operating profit accruing from a whole rate structure is not relevant evidence in determining

whether the sum of the rates is fair. The investment is made on the faith of a profit, the profit accrues from the balance left after deducting expenses from the product of the rates, and the assumption
212 is that the operation is economical and the expenditures are reasonably necessary. If the profit is fair, the sum of the rates is so. If the profit is excessive, the sum of the rates is so. One obvious way to make the sum of the rates reasonable so far as the carrier is concerned is to reduce its profit to what is fair. (Page 483.)"

Among pertinent quotations from other decisions of the Supreme Court is the following from Wisconsin R. R. Comm. v. C., B. & Q. R. R. Co., 257 U. S. 563, 585:

"It is manifest from this very condensed recital that the act made a new departure. Theretofore the control which Congress through the Interstate Commerce Commission exercised was primarily for the purpose of preventing injustice by unreasonable or discriminatory rates against persons and localities, and the only provisions of the law that inured to the benefit of the carriers were the requirement that the rates should be reasonable in the sense of furnishing an adequate compensation for the particular service rendered and the abolition of rebates. The new measure imposed an affirmative duty on the Interstate Commerce Commission to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States. This is expressly declared in section 15a to be one of the purposes of the bill."

The carriers also stress a report of the House committee when the transportation act, 1920, came out from the conference committee. In this report it was stated that the House bill "continued the existing law authorizing the Interstate Commerce Commission to prescribe just and reasonable rates," but that the Senate amendment "added to the just and reasonable rate a requirement that the rates must be adequate to enable the carriers as a whole to earn a fair return on the aggregate value of their property." It was further stated that the "House receded from its disagreement to these provisions."

Up to a certain point we do not differ with the carriers' interpretation of the law. We agree that our duty with respect to fixing just and reasonable rates was changed by Congress in the act of 1920, through the provision of a modified standard for our guidance. We agree that there was then introduced into the law a new element of protection for the carriers in the public interest, a protection particularly of the credit essential to the preservation of an adequate national system of transportation. We believe that it is our duty under the congressional mandate to exercise our powers in every reasonable and practicable way to the promotion of that end. We agree, as we did in 1920, that in such a general rate proceeding as this, involving primarily revenue considerations, we can not undertake to consider the justness and reasonableness of individual rates.

But there is more than this to be said, if our full duty is to be made clear. In Reduced Rates 1922, 68 I. C. C. 676, 730, we said, in considering section 15a, "Our function under the law is not that of mere computers and can not thus be atrophied." Assuming
213 that the paramount purpose of that section is the provision of adequate revenue for the carriers, it is the actual revenue result of a proposed increase in rates which we must have in mind, and not the effect apparent superficially. We understand that in principle the carriers do not dispute this proposition, although they may differ as to how conclusions upon this point are to be reached. Our own view is that we are not justified in approving a rate increase if we are convinced that such increase will not operate to the revenue advantage of the carriers.

On this point the following from Florida v. United States, 282 U. S. 194, 214–215, is pertinent:

"In considering the authority of the commission to enter the State field and to change a scale of intrastate rates in the interest of the carrier's revenue, the question is that of the relation of the rates to income. The raising of rates does not necessarily increase revenue. It may in particular localities reduce revenue instead of increasing it, by discouraging patronage. * * *

"The commission made no findings as to the revenue which had been derived by the carrier from the traffic in question, or which could reasonably be expected under the increased rates, or that the alteration of the intrastate rates would produce, or was likely to produce, additional income necessary to prevent an undue burden upon the carrier's interstate revenues and to maintain an adequate transportation service."

Nor is this all. In Smyth v. Ames, 169 U. S. 466, 547, the court said:

"What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

This principle has repeatedly been affirmed by the Supreme Court. It is stated in Corpus Juris, Vol. 10, page 418, and we think accurately:

"The public is entitled to demand that no more shall be exacted from it than the services rendered are reasonably worth, and this right takes precedence even over the right of the carrier to a fair return on its investment when the two rights can not stand together. In consequence, the value of the service to the public is an important factor in determining the reasonableness of the rates charged therefor."

An application of the principle is found in Covington, &c. Turnpike Co. v. Sandford, 164 U. S. 578, 597, where the court said:

"It is alleged here that the rates prescribed are unreasonable and unjust to the company and its stockholders. But that involves an inquiry as to what is reasonable and just for the public. If the establishment of new lines of transportation should cause a diminution of the number of those who need to use a turnpike road, and, consequently, a diminution in the tolls collected, that is not, in itself, a sufficient reason why the corporation operating the road should be allowed to maintain rates that would be unjust to those who must or do use the property."

214 We do not understand that Congress, even if it be assumed that it could lawfully have done so, attempted in section 15a to override or discard this basic principle of the law, or that there is anything in the decisions of the Supreme Court which indicates that such a result has been accomplished. In Wisconsin R. R. Comm. v. C., B. & Q. R. R. Co., Supra, 586, the court said:

"Section 15a confers no power on the commission to deal with the intrastate rates. What is done under that section is to be done by the commission 'in the exercise of its powers to prescribe just and reasonable rates,' i. e., powers derived from previous amendments to the interstate commerce act, * * *."

In the Dayton-Goose Creek case the question at issue was the validity of the recapture clause, and the court was not called upon to define or consider all the factors which affect the determination of reasonable rates. It did say that an individual shipper, because of his interest in the maintenance of "all the railroads necessary to do the business of a rate territory," could not complain of a general level of rates higher than would have been reasonable considering the service rendered him alone. We agree with the carriers that prior to section 15a the revenue needs which we were bound to consider were those of individual carriers, although as a practical matter we have long considered all competing lines and not merely that line which can handle the business cheapest in determining the reasonableness of rates. Receivers and Shippers Asso. v. C., N. O. & T. P. Ry. Co., 18 I. C. C. 440. Thereafter the standard was changed by Congress so that now we are bound to consider instead the revenue needs of the carriers in the aggregate or by groups, and such needs were brought into the foreground and emphasized. In every reasonable and practicable way we must recognize those needs and protect the general credit of the carriers. The direction to maintain an adequate system of transportation was re-affirmed by Congress in the Hoch-Smith Resolution in 1925, U. S. Code, T. 49, sec. 55.

But section 15a has not, in our opinion, made revenue needs the "paramount and controlling" factor in the determination of a reasonable general level of rates. Factors which theretofore were relevant and entitled to consideration, notwithstanding the revenue needs of individual carriers, are still relevant and entitled to consideration, notwithstanding the revenue needs of the carriers in the

aggregate or by groups. Among those other factors are the following:

1. The value of the service to the shipper.—The relation of the general level of freight rates to the general level of commodity prices is a factor which can not be disregarded, particularly in a time of general financial prostration. Stated in another way, it
215 means consideration of what the traffic can reasonably be made to bear. As the Supreme Court recently said in Ann Arbor R. Co. v. United States, 281 U. S. 658, 669, in speaking of certain words in the Hoch-Smith Resolution:

"If they mean no more than that the depressed condition of the industry is to be given such consideration as may be reasonable considering the nature and cost of the transportation service and the need for maintaining an adequate transportation service, they work no change in the existing law."

This resolution became law subsequent to the enactment of section 15 (a).

2. The volume of business carried on by the carriers and its relation to what may be deemed normal.—As we said in Reduced Rates, 1922, supra, 680:

"The operation of economic forces which have prevented, or which may hereafter prevent, carries from earning a fair return under the adjustment prevailing does not constitute a bar to determination of what a fair return should be. By the qualifying words 'as nearly as may be,' Congress recognized that conditions during certain periods might prevent such realization under any adjustment of rates.

"Section 15a, reasonably construed, contemplates the determination of a return which the carriers, collectively or in rate groups, may attain over a period of time under rates adjusted from time to time with that object in view. The phrase 'from time to time' does not mean that we should adjust and readjust rates to meet business fluctuations."

It is only necessary to have in mind the incongruous results which would follow an attempt to adjust rates so that a stable rate of return would be realized, notwithstanding general business conditions and the rise and fall of traffic in consonance therewith, to realize the unreasonableness and impracticability of any such policy. In part this is recognized by the carriers in this very application.

3. The return realized from the freight service alone, as distinguished from other forms of service rendered by the carriers.—Nor. Pac. Ry. v. North Dakota, 236 U. S. 585, and Norf. & West. Ry. v. West Virginia, 236 U. S. 605. It is not our view that these cases prevent the imposition of a burden upon one form of service to compensate for an inevitable deficiency in earnings of another form of service performed by the same carrier. Revenues in Western District, 113 I. C. C. 3, 22–23. However, the earnings of the par-

ticular service in question are entitled to consideration in the fixing of reasonable rates.

For the moment we express no opinion as to the weight to be given these particular factors in the present proceedings. That will be considered later. But that they are relevant and material factors which must be given consideration we are persuaded. We
216 are here speaking of the general level of rates, as applied to all traffic, or particular forms of traffic, and not of individual rates.

THE OPPOSING EVIDENCE

We now come to the evidence presented by protestants. As in the case of the supporting evidence, it will here be very briefly summarized. Protestants are numerous and represent not only commercial organizations but many of the most important industries of the country. Agriculture in all its branches, including livestock and dairy products, is represented, as well as coal (both bituminous and anthracite), copper, lead, zinc, iron and steel, sand, gravel and crushed stone, cement, sulphur, clay products, logs, lumber, petroleum and its products, newsprint and other paper, packinghouse products, fisheries, naval stores, sugar, furniture, textiles, canned goods, fertilizers, chemicals, glassware, and other industries. Collectively, protestants represent the great bulk of the carriers' freight traffic. In several instances States are represented officially in protest, in the West, East, and South. These protestants in general recognize the serious revenue needs of the carriers, and for the most part they are in no wise unfriendly to the railroads. The protests are not animated by the ordinary and natural antagonism to any rate increase, but very largely by a sincere conviction that harm rather than good would result therefrom, both to the country generally and to the carriers.

This opposing evidence, broadly speaking, follows two distinct although related lines. A mass of evidence was introduced to show that the carriers are not alone in their financial distress but have the company of practically all industries, many of which are in worse condition. The causes of suffering are not only the great shrinkage in volume of business done, but a violent fall in the prices received for products, a fall which has not been experienced by the carriers in the prices which they receive for their services. This fall in the price level, in the case of agriculture, has been of extraordinary severity, so that important branches of that industry are in a state of unprecedented collapse and prostration. The situation is similar and almost as acute in certain other industries, and depression in greater or less degree extends to all.

Because of this situation, the burden of transportation expense in the distribution of products has vastly increased in relative importance and weight, with the result that the industries find it necessary to minimize and curtail this expense in every feasible way, regardless of sympathy for the railroads and reluctance to harm

them financially. Following the line thus indicated, voluminous and detailed evidence was presented to show the unusual opportunities for reducing transportation expenses which now exist, the extent to which industries have availed themselves of these opportunities, and the extent to which this tendency would be accelerated if freight rates should be increased 15 per cent. We shall discuss this situation in more detail at another point in this report. It will suffice here to say that it was by no means confined to mere opinion evidence, for in many instances opinions were fortified by the presentation of concrete and specific facts and pertinent statistics.

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In addition to evidence along these lines, testimony was given by economists to show that an increase in freight rates under present conditions would be economically unsound, and that it would be much more likely to harm than to help the general situation. It was also shown that in certain former periods of acute financial depression the railroads, prior to effective Federal regulation of their rates, did not increase rates. On the contrary the tendency was downward. Statistics were presented covering railroad operations in the past, including financial results, to some of which we shall advert hereinafter. The fact was emphasized that it has been decline in net passenger earnings rather than in net freight earnings which has been the predominant factor in bringing the railroads to their present position. Evidence was also offered to show that the credit situation of the carriers may not in all respects be as desperate as is indicated by the testimony of the committees representing security owners.

DISCUSSION AND CONCLUSIONS ON 15 PER CENT INCREASE

In this discussion we shall deal first with the railroad credit situation, dividing it into two periods, one from 1920 to 1929, inclusive, and the other from 1930 to the present time.

The first of these periods, considering the carriers in the aggregate, was characterized in general by continual improvement in carrier credit. It was a period of rapid expansion in railroad plant and facilities. Investment in road and equipment increased by about $5,500,000,000. Funded debt, including equipment obligations, totalling $6,918,180,691 par value was issued, some of course in connection with reorganizations and a great part to refund other securities. Stock totalling $1,887,881,601, par value or its equivalent, was issued, including stock dividends, which did not, however, account for any large fraction of the total, and stock issued in connection with reorganizations. Corporate surplus increased from $3,142,416,871 to $5,529,010,053, a total of $2,386,593,182, or about 76 per cent. The amount of stock yielding dividends increased from $5,075,039,642 to $7,506,264,973; the average rate on dividend-yielding stock, from 6.52 to 7.47 per cent; and the average dividend on all stock, from 3.74 to 5.70 per cent.

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It is true that at no time did the aggregate net railway operating income equal to 5.75 per cent on our best estimate of the fair value of

aggregate carrier property; and much has been made of this fact by the carriers and security holders. But without wholly disparaging the importance of this fact, it is also true that after 1922, when we found 5.75 per cent to be a fair average return, the general trend of interest rates was downward, and that at no time following the 10 per cent reduction in rates in that year did the carriers seek a horizontal increase in rates, except in the western district. There a 5 per cent increase was sought and denied, but with the suggestion to the carriers that they should analyze their traffic and initiate increases on particular commodities in lieu of a horizontal increase on all traffic. We are also persuaded that the recapture provisions of section 15a had a tendency to depress aggregate net earnings by unduly stimulating the expenditures of the more prosperous carriers.

The point has been made that the carriers during the period of prosperity were prevented by public regulation from enjoying the large profits which accrued to private unregulated industries. Aside from the fact that in the period 1920 to 1929, the carriers increased their total corporate surplus by over two billions of dollars and at the same time were able to increase dividend payments materially, the evidence indicates that a misleading impression is created by the fact that railroad earnings are stated in the aggregate, including all railroads both good and bad, those which were improvidently constructed with inadequate public need and those which constitute the essential arteries of commerce. In the case of private industries, no similar information is broadcast and attention is apt to be concentrated on the outstanding companies which are making the largest earnings without reference to a greater number which have failed. Research into the aggregate earnings of typical private industries the results of which were presented of record, indicate that the average earnings of the railroad industry have been better than those of some of these private industries and not much less favorable than those of others.

Reference has also been made to the dwindling ton-mile revenue of the railroads, and this is ascribed to public regulation. From 1890, when the figure was 0.941 cents per ton-mile, the tendency was steadily downward until 1899, when 0.724 was reached. Then it was slightly upward to 1904, when the figure was 0.780. Again the tendency turned downward until a low point of 0.719 cents was reached in 1916. Thereafter, the figure rose sharply during the war period and the immediately ensuing years, with our
219 approval, to meet the greatly increased expense of operation, attaining a maximum of 1.294 cents in 1921. In 1922, the 10 per cent reduction occurred, but its full effect was not felt until 1923, when the figure became 1.132 cents. Thereafter it fell slowly, reaching 1.088 cents in 1929, or a drop of a little less than 4 per cent since 1923. However, in the same period freight operating expense per revenue ton-mile fell from 0.869 to 0.729 cents, or a drop of about 16.1 per cent. Net railway operating income from freight per net ton-mile increased from 1,918 mills in 1923 to 2.765 mills in 1929,

a gain of a little more than 44 per cent, whereas net railway operating income from passengers per passenger-train car-mile decreased from 4.697 cents in 1923 to a deficit of 0.586 cents in 1929. It is plain that it has been the passenger rather than the freight business which has been a drain on net railway earnings.

Revenue per ton-mile is not a precise index of the general freight rate level, because of the varying length of average haul and composition of traffic. Assuming it to be nearly correct, it does not follow that the drop in this figure since 1923 is due to public regulation, although this may in part be the case. We have reduced various rates and increased others. However, it is well known that the railroads have themselves voluntarily reduced many rates for competitive and commercial reasons. The nonferrous metals are outstanding examples, the rates on which the carriers have reduced for one cause or another to such an extent that, in general, the increase which we granted in 1920 has been wholly eliminated together with a substantial part of the increase made by the Director General of Railroads during the period of Federal control. Other illustrations in the case of transcontinental traffic, lumber, petroleum and its product, cotton, and numerous other commodities are familiar.

Traffic and earnings fell sharply in 1930, but without immediate substantial effect on railroad credit. The market for railroad bonds continued good. In that year, omitting issues of less than $100,000, bonds with a par value of $675,073,000 were marketed at an average yield to the public of 4.77 per cent, and $100,328,000 of equipment obligations at an average yield of 4.62 per cent. These were the lowest average yields from railroad securities sold since 1920, with the exception of 1928 in the case of bonds and 1927 and 1928 in the case of equipment obligations. In the first six months of 1931 bonds with a par value of $319,209,000 were marketed and $38,209,000 of equipment obligations. Counsel for the savings banks and insurance companies stated in argument that credit was relatively good in the first three months of this year.

The abrupt decline in railroad credit, therefore, is a very recent event, but that there has been such a decline, more particu-
220 larly in the case of overlying and refunding bonds, has been clearly shown. Even if the showing made by the committees representing the security holders be discounted somewhat, the situation is still ominous. That it reflects a present loss of confidence in and distrust of the railroad securities available for marketing purposes, as a reliable and stable investment, can not be gainsaid, and if this distrust is prolonged for any considerable period of time the results are likely to be very serious, both in their immediate effect on the railroads themselves and in their indirect effect upon the financial situation generally.

We are not unmindful of the needs of the carriers as to proper maintenance. Operating expenses in 1930 declined from the average of the preceding years by approximately $600,000,000, or 13.4 per cent. There was a further decline in the first 6 months of 1931, as

compared with the similar period of 1930, amounting to $357,000,000, or 17.2 per cent, making an aggregate decline of 28.3 per cent under the average of the years 1924–1929, inclusive. To effect these decreases in operating expense it was necessary to limit maintenance. The aggregate expenditure for maintenance of equipment, way, and structures in 1930 was $347,000,000, or 16.7 per cent below the average of the six-year period 1924–1929, inclusive. The combined maintenance of equipment, way, and structures in the first six months of 1931 was $192,000,000, or 20.8 per cent lower than that in the similar period in 1930. The maintenance expenditures in the first half of 1931 were, therefore, below the average of the years 1924–1929 to the extent of 34 per cent, which on annual basis would be approximately $705,000,000.

The decline in credit has been due primarily to the shrinkage in railroad earnings caused by loss of traffic, a falling off, roughly speaking, from about 1,000,000 carloadings per week to about 700,000, to say nothing of the equally serious loss in passenger traffic. That this decline is due chiefly and predominantly to the business depression we have no doubt. There are few now living and active who have had experience with a depression at all like the present one. It has been forgotten that in such depressions the railroads always suffer very severely. The industries which suffer most severely are those which produce largely capital equipment, such as the iron and steel industry; next comes the railroads; then the industries which produce primarily consumers' goods; and the public utilities suffer least of all. On the other hand the reaction, as prosperity returns, is in reverse order. But in this instance the distrust in railroad securities inspired by the effects of depression has been much accentuated by the rather sudden awakening to the fact that the railroads are now faced by serious competition from other, largely new,
221 and developing means of transportation. And it has been further intensified by the widespread publicity which the railroads and the holders of their securities have deemed necessary in the pursuit of restrictive and regulatory legislation for the other forms of transportation and the proposed rate increase. The final result is that the situation now has in it the element of panic.

This overshadowing pessimism, like the optimism of 1928, is undue, and will be corrected in the natural course of events. But in the meantime it is a fact which must be reckoned with. The question is whether a 15 per cent increase in freight rates is an effective, reasonable, and lawful way to meet the situation.

It is not inappropriate to say that we approach this question with a background of experience with railroad rates, and the conditions under which they are made and can be maintained. We deal with hundreds of rate complaints every year, and in recent years have in addition carried on most extensive investigations of class rates and the rate adjustments on particular commodities. Evidence as to commercial and industrial conditions has been prominent in all of these investigations. We have also made extensive inquiries into

motor transportation and are informed in regard to transportation by waterways and pipe lines, and we know the extent to which the railroads have reduced rates to meet such competition.

The carriers draw a parallel between the present situation and that which existed in 1920 when a general increase in rates was authorized. Conditions then prevailing were radically different from those which exist to-day. In 1920 business was prosperous and commodity prices were relatively higher than railroad rates. Taking 1916 as a base, the year when revenue per ton-mile reached its lowest point, but a year of marked railroad prosperity, the statistics of the Bureau of Labor show that the wholesale prices of all commodities had risen 62.1 per cent in 1919 and 80.6 per cent in 1920. Prices of farm products were 86.7 per cent higher in 1919 and 78.6 per cent higher in 1920. On the other hand, in 1919, the year preceding the 1920 increase in railroad rates, revenue per ton-mile was only 37.3 per cent higher than in 1916. Contrasting this showing with 1930, in that year commodity prices generally were only 0.9 per cent higher than in 1916 and farm products 4.6 per cent higher, whereas revenue per ton-mile was 49.8 per cent higher than in 1916. Continuing the downward movement, commodity prices generally in June, 1931, were 18.1 per cent lower than in 1916 and the prices of farm products 29 per cent lower, whereas railroad rates remained practically stationary at the 1930 level.

In 1920 the railroads faced an emergency, but it was a very different emergency from that which exists to-day. They had
222 passed through the stress and strain of the War period and ensuing labor strikes, with the result that their properties were in poor physical condition and operation was demoralized. Shippers were crying for good service and quite willing to pay the price of higher rates. There was no contention that an increase would curtail traffic. In addition the railroads were in unprecedented need of new capital. Interest rates were very high, and many of the soundest railroad companies were borrowing from the Government at 6 per cent to meet pressing needs for cash on our certificate that funds could not be obtained from other sources. By way of contrast, service is now excellent and also the physical condition of the properties, although the present curtailment of maintenance may, if continued, change this latter situation. Instead of inadequate equipment and facilities, the railroads now have a superabundance of both, many cars and locomotives being in storage in good physical condition. Nor will refunding needs be great in the immediate future. The maturities during the next 4 years are as follows:

Year	Bonds	Equipment obligations
1932	$70,209,513	$110,782,506
1933	187,697,740	107,484,752
1934	265,945,749	104,658,536
1935	105,585,066	101,714,545

While the credit of the railroads is at a low ebb, it is also true that for the present and some time in the future the needs for new capital are not likely to be of commanding importance.

In some respects the situation in 1922, when rates were reduced 10 per cent, is more nearly parallel with that now existing. The country was then in a state of business depression and traffic had fallen off. Commodity prices had dropped, so that generally they were only 13.1 per cent higher than in 1916, and the prices of farm products were only 11.1 per cent higher. In 1921, on the other hand, revenue per ton-mile was nearly 80 per cent higher than in 1916. The following extracts from our opinion in Reduced Rates, 1922, supra, may be considered in the light of the fact that if an increase of 15 per cent should now be made effective, railroad rates on most commodities would be somewhat higher, even, than they were in 1921:

"The carriers contend that the increased rates were not even an important contributing factor in the lessening of traffic in 1921, and that reduction in rates will not restore normal traffic. They do not, however, advocate rate increases as a means to increase net revenue. They admit that rates are too high and must come down, but they insist that rates can not be further reduced until the costs of transportation are further reduced. (Page 704.)

223 "It is generally recognized that existing high rates are a burden upon commerce, and many shippers insist that they are forcing movement to other forms of transportation, tend to restrict traffic, and in some instances to prevent particular movements. (Page 705.)

"It is our duty to initiate such rates as will enable the carriers to earn as nearly as may be a fair return, qualified as provided in the act. In 1920 we authorized large increases in freight rates and passenger fares designed to produce the necessary revenues under the conditions then prevailing. There was then little doubt of the ability of industry to bear the increased charges. The situation has since changed. The country has been passing through a period of abundant supply and slack demand, in which prices at the source have fallen off sharply. High rates do not necessarily mean high revenues, for, if the public can not or will not ship in normal volume, less revenue may result than from lower rates. (Page 732.)

"Shippers almost unanimously contend, and many representatives of the carriers agree, that 'freight rates are too high and must come down.' This indicates that transportation charges have mounted to a point where they are impeding the free flow of commerce and thus tending to defeat the purpose for which they were established, that of producing revenues which would enable the carriers 'to provide the people of the United States with adequate transportation.' (Pages 732-33.)

"Manifestly the depression of 1921 resulted primarily from causes other than transportation charges. But it does not follow that under present conditions existing high rates do not tend to retard

the return to a more normal flow of commerce. Deflation has taken place to a greater or less extent in wages and origin prices of commodities in nearly all branches of industry but most transportation charges are still near the peak. (Page 733.)

"We are of opinion that general reduction in the rate level, as substantial as the condition of the carriers will permit, will tend not only to lessen the transportation burden but also to equalize and stabilize the conditions under which commerce and industry are carried on, with consequent fuller assurance to the carriers of realizing the fair return contemplated by the law. (Page 734.)"

As above indicated, commodity prices generally, and particularly the prices of farm products, are very materially below the pre-war level and there is no upward tendency, whereas railroad freight rates are much above a pre-war level and the proposed 15 per cent increase would place them, broadly speaking, at a pinnacle in railroad history. It follows irresistibly that freight rates, even now, constitute a greater relative burden upon industry than ever before, and at a time when industry has gravely impaired stamina to sustain the burden. There is diligent search for means of saving every cent possible in expense of distribution.

That there are important opportunities for such saving which already have been utilized in substantial degree the record amply shows. Waterway competition is not a new thing with the railroads, but it was greatly stimulated by the opening of the Panama Canal. The steamship lines which operate through that canal, although not subject to any effective public regulation, are not increasing their rates but on the contrary have been reducing them as a
224 result of intense competition. This waterway competition is now a controlling factor on most transcontinental traffic, not only between the coasts but also reaching far inland. Pacific coast lumber, for instance, moves extensively by rail as far as the Middle West from eastern ports which it reaches by boat through the Panama Canal. As yet the boats have not been a controlling factor in the fruit and vegetable traffic, but certain of them, anticipating some increase in rail rates, are proposing to shippers that they will install refrigeration system if traffic is offered. This would be a menace to rail traffic if rates are increased. Besides the Panama Canal traffic there is important waterway competition along the Atlantic coast and Gulf, on the Great Lakes, on the Mississippi and Ohio Rivers, and on the Hudson River and New York Barge Canal. Very important movements on these waterways are of petroleum and its products, coal, newsprint, sulphur, and grain. Import traffic brought by water from foreign countries to our ports often menaces domestic movements, as in the case of wood pulp, petroleum, nonferrous metals, cement, coal, sugar, and iron ore.

Movement by truck is a new form of competition which has been developing with great rapidity. It has been principally effective on less-than-carload traffic, and relatively short hauls of such commodities as livestock, cotton, cement, sand and gravel, gasoline,

fruits and vegetables, and general merchandise; but it is continually extending to more and more traffic and for longer distances as trucks and trailers are enlarged and highways improved. At present it is aided by prevailing low prices for gasoline and rubber and the oversupply of labor. In addition to rates, advantages which it offers to the shipper are in rapid and flexible service, store-door receipt and delivery, the transportation at carload rates of much smaller lots than are possible by railroad, and elimination of costly railroad packing requirements. The carriers introduced evidence to show that it would be feasible for the trucks to divert only a comparatively small amount of additional tonnage, even if rates were increased. But without exaggerating the menace of this form of competition, we are convinced that the carriers have underrated it and that its possibilities are materially greater than they are prepared to concede.

For a long time transportation of crude oil by pipe line has exerted a controlling force on many railroad rates on both crude oil and gasoline. To this competition has now been added pipe lines for the extensive transportation of gasoline and natural gas. This form of competition has progressed to an astonishing extent, and it seriously affects not only rail movement of petroleum and its products and the rates thereon but also rail movement and rates
225 on coal, both bituminous and anthracite. In addition, so far as coal is concerned, movement by rail has been substantially curtailed by the construction of central power plants, both water power and steam. While the latter use coal, they consume it with maximum economy and often obtain it from short-haul sources, distributing their own electric power widespread by transmission lines.

Nor are these competitive means of transportation by any means the only factors tending to lessen traffic which must be considered in connection with a relatively high level of freight rates. The evidence before us amply shows that the tendency of such a level is to localize industry and also impel the use of substitute products. It is the long-haul producer demanding the maximum of transportation service who suffers most severely from high rates. The advantage of the short-haul producer is greatly accentuated, and in consequence a tendency rapidly develops to relocate plants or establish branch plants and warehouses. And these new plants or subsidiary means of distribution are inevitably located, not only with a view to shortening the haul, but also with an eye to competitive waterway and truck opportunities. That such a tendency in industry is rapidly developing the evidence before us plainly indicates. And there is a similar tendency to use, where available, substitute products which require less transportation in their distribution. This is particularly true of lumber and coal, but it affects other industries as well.

However sympathetic one may be with the plight of the railroads and their need for additional revenue, such sympathy cannot with benefit to any one be carried to the point of a refusal to recognize

and face facts. The facts set forth above show beyond question that there are elements of plain peril to the railroads in such an increase in freight rates as they propose at the present time. The chief dangers are (1) that at a time when transportation costs are of vital consequence to every industry it will simulate new competitive forces already rapidly developing, (2) that it will alienate or impair the friendly feeling toward the railroads on the part of the people of the country which is essential to adequate legislation for their protection and the proper regulation of all forms of transportation in the public interest, and (3) that it will disturb business conditions and an already shell-shocked industry, and accelerate the tendency toward a localization of production. It should be borne in mind that traffic once lost to a competitive agency is far more difficult to regain than it is to hold before it is lost. And it should also be noted that disturbance to industry would be caused, not only by the immediate increase in charges, but also by the slow process of inevitable readjustment to a lower level of rates which would be
226 necessary in many instances and which the railroad executives themselves concede that they anticipate.

We have often referred to the fact that we are not managers of the railroads and have taken the position that we ought not to interfere with those who are entrusted with management on matters which are not controlled by law but must be determined in the last analysis by wise administrative policy and judgment. That is still our view. But here reliance upon the judgment of the executives as to the revenue effect of an increase in rates is much weakened by their failure to adduce any substantial reasons for their judgment and the definite withholding of the best available information on this point in their possession, namely, the information of their traffic departments. The excuse that this would have prolonged the hearings unduly is not, in our judgment, an adequate answer. There are competent traffic officers in all the districts who represent the carriers collectively and could have been used as a means of concentrating and assembling this information. Not only did the carriers fail to present such witnesses, but in several instances they refused to produce traffic officers whom protestants wished to call to the stand for the purpose of proving their case in opposition. In addition we have the evidence gained by experience with the numerous voluntary reductions which have been made, often below maximum reasonable rates fixed by us.

On the other hand we have a mass of definite and concrete evidence from the shippers on this point of revenue effect which stands in the record uncontradicted by anything other than general assertions. Five of our members heard this evidence, although none heard it all, and they had the opportunity of appraising the character and sincerity of the witnesses. In our opinion this evidence is entitled to great weight.

We also have a mass of definite and concrete evidence from shippers in regard to the general industrial collapse and the condition of individual industries. This evidence also stands uncontradicted and, as has already been indicated, it shows beyond dispute that the situation of the railroads with respect to earnings is paralleled throughout the industrial world, and that many particular industries are in much worse plight. This is especially true of agriculture, and preeminently true of the grain farmer. The present prostration of a large part of agriculture has seldom if ever been equalled in the history of the country.

Upon the evidence, therefore, it is our conclusion that a 15 per cent increase in all freight rates and charges would increase revenues, if at all, only temporarily and that its ultimate effect, not very long postponed, would be to harm rather than help the
227 railroads. It is similarly our conclusion that such an increase would raise the rates upon many kinds of traffic above a just and reasonable level. This latter conclusion applies particularly to the products of agriculture, including livestock. We are advised that the committee representing the cooperating State commissions has reached the same conclusions.

It does not follow, however, from the conclusions above set forth that no increase in rates should be made at this time. As a result of investigations extending over many months we have prescribed, effective December 3, 1931, maximum reasonable rates on class traffic in official and western trunk-line territories and between those territories whose net effect we believe will be a substantial increase in revenue, unless diversions to trucks attain unanticipated proportions. We have also prescribed maximum reasonable rates throughout the country on furniture, effective February 25, 1932, which may produce increased revenue, although the danger of diversion to trucks is greater in the case of furniture than in the case of class traffic taken as a whole. We have also prescribed maximum reasonable rates on livestock in the western district, effective January 25, 1932, which should increase the revenue from this traffic in western trunk-line territory, where the revenues of the railroads have been particularly low. A similar revision, in general upward and effective December 3, 1931, has been prescribed in the case of petroleum and petroleum products.

In addition to these pending revisions and others which are in progress on our docket, we believe that the traffic departments of the railroads should address themselves to the task of making such changes in the rates on particular kinds of traffic as will, in their judgment after careful analysis of all attendant circumstances, produce additional revenue and which can be supported as reasonable under existing conditions. This does not necessarily mean increases in rates. It is quite likely that there are now many rates which will produce more revenue if they are reduced, and we include in this category rates which we ourselves have prescribed as maxima. Some

such rates have already been reduced, but we fear that there is at times a reluctance on the part of traffic officers, because of possible contingent effects, to cut below these rates even when they believe that the result would be to railroad advantage. But in addition to reductions it is not at all unlikely that there are a considerable number of rates which can reasonably be advanced substantially, even under present conditions.

If tariffs are filed in accordance with this suggestion, proposing changes in rates upon particular movements or kinds of traffic, we shall be guided, in determining whether they shall be suspended, not only by the statements filed in support and protest, but also, in part, by our own general knowledge and the record in this proceeding as bearing on the particular kind of traffic in question. It should be noted that the protests which we are here considering do not go to every form of traffic. And to the extent that suspension proceedings are initiated, we shall expedite their disposition.

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But at best a process of rate readjustment of the kind above described is slow, and in our judgment it will not fully meet the needs of the present situation. The further step which we are now about to propose is offered for the consideration of the railroad executives in the immediate emergency, and only as a temporary measure of relief. It is motived by the thought that the distrust of railroad securities is rapidly gaining such elements of panic that a slight charge on the traffic of the industries of the country best able to stand it may justifiably be imposed, through freight rates, for the purpose of increasing confidence and averting developments which might further disturb an already tremendously shaken financial situation, and to avoid impairment of an adequate system of transportation.

This plan is outlined in the appendix. It is designed to avoid imposing burdens on industry which can not reasonably be borne under present conditions, to limit the danger of diversion of traffic to other forms of transportation, and to disturb business conditions as little as possible by preserving, very generally, existing rate relations. Therefore certain commodities have been excluded from any increases and the increase has been tempered on others. The basis has been made as definite as possible in order to minimize disputes, and as simple as possible in order that the increased rates may be made effective speedily. The increase is in cents per 100 pounds or amounts per car, subject to a fixed percentage maximum limit. Except for very short hauls affected by this maximum, it is in uniform amounts, so far as particular kinds of traffic are concerned. The abnormal conditions now existing distinguish the situation from that before us Increased Rates, 1920, supra, wherein we discussed the respective merits of percentage and flat increases. We propose to limit the increase to a period ending March 31, 1933. Its continuation after that time will depend upon conditions then existing.

As has been shown, the carriers and holders of their securities stress the credit situation. As a whole, earnings are inadequate, yet the earnings of certain of the carriers are ample to support their credit. The securities of even such carriers suffer from the distress of others not so fortunate. The increases which we propose would, without further provision for the allocation of the resulting revenue, to a certain degree help the carriers now in need, but would go, in
229 part, to carriers now securing revenues adequate to sustain their credit, and as to which no emergency exists. They would not afford aid in maintaining an adequate transportation system for the country in proportion to the burden imposed on the public.

The advisability of pooling the earnings resulting from any increase granted has been discussed of record. Assuming that the credit of the railways is the prime reason for this application, the suggestion has merit. The standing of railroad obligations and the consequent credit of the carriers, even those enjoying adequate earnings, will be improved if a plan can be devised which will give reasonable assurance that fixed interest obligations, not now in default, can be protected generally from default.

The applicants apparently recognize that at this time it is futile to increase the rates with the object of reaching 5.75 per cent on the value of their properties as a whole. The practical limitation of what the traffic will bear and continue to move by rail must be given consideration. Clearly any practicable increase, unaccompanied by a pooling provision, might not prevent threatened default in the fixed interest obligations of some of the carriers. On the other hand, a smaller increase in the aggregate revenue, marshalled for the benefit of the carriers in need, will tend to stabilize the industry. We shall provide for such marshalling.

We do not find that we are justified on this record to attempt, by a rate increase, to protect the margin of one and one-half times fixed charges set by the New York law. To provide so far as practicable that actual interest charges be met is justified.

The plan outlined in the appendix we estimate will produce between one hundred million and one hundred twenty-five million dollars increased revenue on the basis of present traffic if applied both State and interstate. This should cover deficiencies in interest on fixed interest obligations with a substantial balance left over. The above estimate does not include increases in revenue which should accrue to the carriers during the coming year from the outstanding orders of the commission which have been mentioned above.

Many difficulties will have to be met in working out the details of a plan for the marshalling of the fund derived from the increase authorized, and for the distribution of that fund in the first instance among the carriers who fail to earn their interest charges, in proportion to their deficiencies. We are convinced that these difficulties

can be met. A plan to that end should be worked out by the carriers and submitted for our approval. In such a plan appropriate provision will have to be made to take care of variations in maintenance, depreciation and other operating charges. Perhaps the depreciation and maintenance charges of the year immediately preceding the
230 time of computation should be prescribed as the maxima of those accounts in determining deficiencies in earnings. Appropriate provisions should be made as to the accounts of carriers reporting separately but operated as part of a system. Other similar adjustments may be necessary.

Some carriers have obligations that are already in default, some are now in receivership, and some derive less than 50 per cent of their revenue from freight transportation. Such carriers should neither contribute to, nor receive from, the fund created, and they should be allowed to retain the full amount of the revenue accruing to them from the increased rates. The applicants should set up the machinery for operating and should operate the plan. At the end of six months or other appropriate interval, any balance remaining in the fund so created should be distributed to the carriers in the proportions in which earnings accruing on their properties have contributed to it.

The increase provided for in the appendix will be conditional upon the submission by the carriers, on or before December 1, 1931, for our approval under the interstate commerce act, of such a plan as is above described for the division among them of the gross proceeds derived from the increase. The plan submitted should provide that the revenues received from such increases should be earmarked and should be used for the purposes and in the manner above provided, and not otherwise. The increases herein proposed should be accepted as an entirety. If, for competitive or other reasons, the carriers decrease any of the rates so increased, the amount of the decrease should be taken from the basic rates rather than from the earmarked increases provided herein. Upon such submission and approval, we shall grant the necessary authority under section 6 for filing the blanket supplements, and those will be permitted to take effect without suspension, subject to the proviso that we shall reserve discretion to require minor changes in the details thereof; and that the resulting rates will in all respects be subject to investigation and determination as to the lawfulness of particular rates or schedules of rates, as provided by the act.

THE RAILROAD FUTURE

It is not enough in this report to deal merely with the 15 per cent increase proposed and our substitute form of temporary relief. Something should be said of the railroad future and what can be done in a more enduring way to protect and stabilize it. The rail-

roads now furnish the backbone and most of the other vital bones of the transportation system of the country, and we believe this will be the situation for a long time to come. We are not im-
231 pressed with the thought that they are doomed, in anything like the near future, to go the way of the stage coach and canal.

The most effective remedy for the immediate ills of the railroads is the economic recovery of the country. The present low earnings are not the result of low rates but reflect general industrial conditions. The earnings will continue to reflect those conditions as business improves, just as they have in the past. While the tide may be slow in turning, there is no more reason for thinking that business will not improve than there was in 1928 for thinking that depressions were a thing of the past and that we were in an era of permanent prosperity. Public emotion swings from one extreme to the other, and there is nothing more volatile than the emotion of the investing public. When railroad earnings take a sharp turn upward, as in due time they will, railroad credit will also rise.

But there are many things which can be done to improve the situation, some of them by Congress, some by State legislatures, some by this commission and the State commissions, and some by the railroads themselves.

An important step is the repeal of section 15a and the substitution of a better section designed to accomplish the same general purpose. We recommended such legislation last year in a special report to Congress and shall renew the recommendation in our annual report this year. The present recapture provisions impose in their enforcement a vast expenditure of time and money upon both the Government and the railroads, they provoke litigation over complicated questions of valuation and accounting they encourage extravagant expenditures by the more prosperous companies when times are good, they hang like a cloud over the credit of many companies when times are bad, and under the present law there is no effective way of using the funds to public advantage if they are recaptured. The problem presented by the varying earnings of different railroads can better be met in other ways, such as consolidations, pooling arrangements, and the adjustment of divisions.

Nor do we believe that the present provisions of paragraph (2) are desirable in all respects. They cherish elusive hopes that by mere changes in rates railroad earnings can be made stable regardless of economic conditions. In our special report to Congress we suggested a substitute for this paragraph which we believe will better serve the end desired. It is short and there is no better way of explaining its provisions than by inserting it here:

"As a guide in adjusting the general level of rates, in the exercise of its power to prescribe just and reasonable rates, the commission shall from time to time determine and make public what percentage of the aggregate of the contemporaneous rate bases of the operating carriers constitutes a fair return thereon. In making such deter-

232 mination it shall give due consideration, among other things, (1) to the present and reasonably prospective transportation needs of the country, (2) to the necessity, in the public interest, that the carriers shall be able to establish and maintain a credit sufficient to attract the capital required to meet these transportation needs, and (3) to the necessity, in the public interest, that the carriers shall furnish transportation service to shippers and travelers at the lowest rates consistent with adequate service and the meeting of the transportation needs. Having determined such fair return, the commission shall endeavor to adjust the general level of rates so that operating carriers as a whole (or as a whole in each of such rate groups or territories as the commission may from time to time designate) will under normal conditions and under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures, and equipment, earn an aggregate net railway operating income equal, as nearly as may be, to such fair return. The fact that such aggregate net railway operating income falls below such amount in times of economic depression or rises above it in times of economic prosperity shall not necessarily be regarded as a reason for raising or reducing rates, as the case may be; but the duty of the commission in the exercise of sound discretion shall be to maintain so far as possible a general level of rates which over a period of years will produce earnings consistent with the principles, above set forth, to be observed in the determination of the fair return; and the commission shall initiate, modify, establish, or adjust rates to the extent that it may find necessary in the full performance of the foregoing duty."

We believe that this substitute emphasizes the public need for maintaining railroad credit quite as strongly as does the present paragraph. It will be noted, also, that it contains recognition of the principle that inasmuch as railroad earnings must inevitably fall below normal in times of depression they may properly be permitted to rise above normal in times of prosperity. Such recognition might well be supplemented by a provision that some portion of surplus accumulations shall be held in liquid form. Present experience shows that no matter how large such accumulations may be (and they have been large in the case of the railroads during the past decade), they may be of comparatively little use in meeting immediate deficiencies in earnings, if they are invested in railroad property, as they normally are. So invested, they can be converted into cash to replenish the treasury only by the issue of securities, and these can not be issued when credit is impaired.

Congress and the State legislatures should also, we believe, direct their attention to the proper regulation in the public interest of all competitive forms of transportation. In this we include such restrictions on the size and weight of trucks and their lading as public safety may dictate, such taxation of trucks and busses as may be necessary to impose upon them a fair share of the burden of the

public highways which they use, such supervision of truck and bus common carrier lines as may be necessary to avoid destructive and wasteful competition, and such regulation of their rates and
233 service as the public interest may require. We are here stating only very broad principles, the practical application of which must be governed by the definite ascertainment of facts, many of which are now in controversy. Our purpose for the moment is only to direct attention to matters which are in urgent need of legislative consideration. The facts in regard to motor competition we helped to develop some years ago in a report made after special investigation. We hope in the near future to supplement these facts and bring them up to date, together with specific recommendations for legislation, in a report on the coordination of rail and motor service which is now in progress.

What we have said as to the trucks and busses applies also to the waterways. It is strongly urged by the rail carriers that the water carriers are not bearing their fair share of the burden of the waterways, constructed or improved at public expense, on which they operate. Here again the facts are controversial and must be ascertained. But the contention of the rail lines presents a matter for unbiased investigation, which may be in need of correction if fair competitive conditions are to prevail. The same may be said of the public regulation of the port-to-port rates of common carriers by water, which are now subject to no effective regulation. The lack of stability and apparent demoralization from time to time of these rates, particularly those of the lines operating through the Panama Canal, at least suggest that some greater measure of public control may be in the interest of the water carriers themselves as well as in the general interest. History shows that this was true of railroad rates, as most of the railroads now concede. These matters need present legislative consideration.

The so-called car-forwarding companies present a situation in the transportation field which calls for public regulation, as we pointed out and recommended in our last annual report. Here there seems no difference of opinion on the point. It is not unlikely that the service performed by these companies can, with profit to the railroads and advantage to the country, be made a definite part of railroad service.

The railroads, as cities expand and public highways multiply in number and use, have been and are being called upon to invest great amounts of capital in alterations of their properties which are often, from a strictly railroad point of view, very largely nonproductive. The burden of these expenditures must be borne by the public in one way or another, but the question arises whether this burden is being apportioned fairly. To the extent that it is caused by other than railroad needs and does not increase the traffic of the railroads or save them expense, it may be that this burden should justly be shifted from the shoulders of railroad users.

234 Railroad managements face new conditions which compel changes in methods of operation, manner of service, and price policies. It is a situation which frequently confronts private, competitive industries, and they have become accustomed to such readjustments by force of necessity. It is different with the railroads. Although they have never had a complete transportation monopoly, they have in the past occupied the field with sufficient exclusiveness so that, apart from competition with each other, their habits of thought are less flexible and not so well adapted to facing and meeting new competitive conditions. This they must now do. The spur of present adversity will no doubt help to that end.

Foremost among the problems to be solved is that presented by the passenger service. Broadly speaking, this service for the country as a whole fails by something like $450,000,000 annually to contributing its proportionate share toward taxes and return on railroad property. The close similarity of this figure to the amount of money which the carriers estimated that they would realize from the 15 per cent increase, if no loss of traffic resulted, is striking. In other words, if the carriers were able to conduct the passenger business as profitably as the freight business, they would even now, under adversity in a period of great depression, be earning enough to stabilize their credit situation. The freight business as a whole is doing reasonably well, present conditions considered. The carriers in this record pointed out the substantial curtailments of passenger service which have been made in an endeavor to reduce losses. They have also undertaken experimental service in the hope of recovering profitable patronage. But much more drastic measures will be necessary if the staggering deficit incurred by that service is to be reduced to bearable proportions. A little has been done in the pooling of competitive train service by rival lines, but we believe that the opportunities in this direction have by no means been exhausted. Much more can be done under existing law. On some lines it may be necessary for the companies to retire from the passenger business entirely. On others it may be that better service with lighter trains at greater speed and at lower fares will revive patronage and reduce expenses. Our knowledge is too inadequate to enable us to specify the remedies which must be applied. But plainly the situation is in need of drastic attention.

So far as freight service is concerned, the railroads have so many and so great inherent advantages of economy, particularly in the case of the longer hauls and the heavier traffic, that we can not believe that they will not be able to withstand the competition of the motor trucks. It may be that some traffic must permanently be surrendered to the trucks, but for the most part it is traffic on
235 which the railroads have always claimed that they lost money.

To meet this situation effectively, however, it is evident that radical changes in service and rates must be made. Means, mechanical and otherwise, of making the necessary changes in service are

already beginning to appear in the foreground in rapidly increasing volume. They will require trial and test to demonstrate their efficiency, but that some of them will at length pass through the experimental stage to successful adoption we have no doubt. So far as rates are concerned, it is clear that the present structure has developed under principles and theories which gave no thought to the competitive agencies of transportation which now exist. As a result, the rates often open a door to effective competition which might well be closed. It is evident that the traffic departments must give new thought to the rate structure in the light of existing conditions.

The new competitive conditions make it necessary, also, for the railroads to cooperate more efficiently with each other and reduce the waste, both in service and in rates, which has marked their own competition. That this waste is of very large proportions is clear. Many specific instances have been brought to our attention. That it can be minimized we also have no doubt, but that this will require a greater degree of cooperation than the railroad executives have yet been willing to put into practice is plain. Such cooperation, which we believe the times make essential, would also be of great advantage in carrying on adequate research and experimentation.

The record shows that in the past decade the railroads have made great strides in improving their service and at the same time operating with greater efficiency and economy. But what they have done in this direction has largely followed lines which developed under conditions different from those which now prevail, and it has been characterized by a continual intensifying of their own competition. At a time when as an industry they have new enemies to face, their warfare with each other has grown more bitter, so that economies in operation have been offset in part by the growth of competitive waste.

All this is contrary to the spirit of the transportation act, 1920. Congress then looked beyond the individual railroad to the concept of a national transportation system. It pointed the way in the consolidation provisions to the reduction of competitive wastes. It went to the extreme of removing the barriers of restrictive Federal and State anti-trust legislation which might otherwise stand in the way. Short of consolidations, it opened wide the door to agreements for the pooling of service and of revenue, whenever it could be shown to our satisfaction that such agreements were in the public interest.

Much has been accomplished in the way of unification, but
236 much remains to be done, and the pooling provisions of the law stand almost unused. Further progress along the lines pointed out by Congress will aid in bringing about the cooperation which is essential to railroad salvation. But the problem can not wholly be solved in this way, nor is there need that cooperation should be subordinated to the consolidation program.

In the meantime we have under way an investigation, Ex Parte No. 104, into such railroad practices as may adversely affect net earnings, and we shall pursue this inquiry with diligence.

The committees representing the security holders have suggested the formation of a special commission to consider the needs of the railroad situation. Such procedure has been followed in England, and it is receiving consideration in Canada, whose problems are very like our own. We have no authority to constitute such a commission and are, therefor, not in a position to follow up this suggestion.

Commissioner Tate concurs in those portions of the report and order which dismiss the petition of the carriers for a fifteen per cent increase in freight rates and which discuss the desirability of attention on the part of the carriers to economies and to competition with other means of transportation and the probable desirability for seeking some character of legislative relief; and further in the portions discussing a plan to be worked out so that application of any increase be so applied that interest on bonds of all railroads, weak or strong, be paid, at least pro tanto; but he dissents from those portions increasing any rates in any respect or in any amount in this proceeding.

An appropriate order will be entered denying the application.

237 APPENDIX

PLAN FOR INCREASING FREIGHT RATES

In the tables which follow, the generic descriptions of commodities or commodity groups are those specified in the order of the Commission, Division 4, of November 22, 1927, In the Matter of Freight Commodity Statistics. They cover the specific items customarily included by the carriers in their reports to the Commission under each numbered description.

The plan is that on commodities included under the following numbered descriptions there shall be no increase:

Number	Description
10	Wheat.
20	Corn.
30	Oats.
40	Barley and rye.
41	Rice.
42	Grain, n. o. s.
50	Flour, wheat.
51	Meal, corn.
52	Flour and meal, edible, n. o. s.
61	Mill products, n. o. s.
70	Hay and alfalfa.
71	Straw.
90	Cotton in bales.
91	Cotton linters, noils, and regins.
100	Cottonseed.
120	Apples, fresh.
122	Berries, fresh.
124	Grapes, fresh.
125	Peaches, fresh.
127	Fruits, fresh, domestic, n. o. s.
130	Potatoes, other than sweet.
150	Beans and peas, dried.
162	Flaxseed.
163	Sugar beets.
170	Horses, mules, ponies, and asses.

Number	Description
180	Cattle and calves, single-deck.
181	Calves, double-deck.
190	Sheep and goats, single-deck.
191	Sheep and goats, double-deck.
200	Hogs, single-deck.
201	Hogs, double-deck.
400	Logs.
402	Wood (fuel).
410	Ties, railroad.
443	Excelsior (wood) and sawdust.

238 On commodities included under the following numbered descriptions there may be an increase of $3.00 per car:

Number	Description
200	Anthracite coal.
300	Bituminous coal.
310	Coke.
320	Iron ore.
330	Copper ore and concentrates.
331	Lead ore and concentrates.
332	Zinc ore and concentrates.
333	Ores and concentrates, n. o. s.
350	Gravel and sand (other than glass or moulding).
351	Stone, broken, ground, or crushed.
392	Products of mines, n. o. s.
401	Posts, poles, and piling.
420	Pulpwood.
430	Lumber, shingles, and lath.
431	Box, crate, and cooperage materials.
432	Veneer and built-up wood.
443	Products of forests, n. o. s., except excelsior (wood) and sawdust.
692	Furnace slag.

On commodities included under the following numbered descriptions there may be an increase of $6.00 per car:

Number	Description
390	Phosphate rock, crude (ground or not ground).
391	Sulphur (brimstone).
490	Iron, pig.
693	Scrap iron and scrap steel.
352	Stone, rough, n. o. s.
353	Stone, finished, n. o. s.
360	Petroleum, crude.
370	Asphalt (natural, by-product, or petroleum).
552	Artificial stone, n. o. s.

On commodities included under the following numbered descriptions there may be an increase of 1 cent per 100 pounds:

Number	Description
101	Cottonseed meal and cake.
110	Oranges and grapefruit.
111	Lemons, limes, and citrus fruits, n. o. s.
123	Cantaloupes and melons, n. o. s.
126	Watermelons.
140	Cabbage.
141	Onions.
142	Tomatoes.
143	Vegetables, fresh, n. o. s.
151	Fruits, dried or evaporated.
152	Vegetables, dried, n. o. s.
160	Vegetable-oil cake and meal, except cottonseed.
161	Peanuts.
164	Products of agriculture, n. o. s.

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Number	Description
440	Rosin.
441	Turpentine.
450	Petroleum oils, refined, and all other gasolines.
451	Fuel, road, and petroleum residual oils, n. o. s.
452	Lubricating oils and greases.
453	Petroleum products, n. o. s.
540	Cement, natural or Portland (building).
550	Brick, common.
551	Brick, n. o. s., and building tile.
560	Lime, common (quick or slacked).
630	Ice.
640	Fertilizers, n. o. s.

On all other commodities, including all less-than-carload freight, there may be an increase of 2 cents per 100 pounds.

The increases set forth above are subject to the following provisos:

1. In no event shall the increase levied on any carload be in excess of 10 per cent of the carload charges which would be assessed in the absence of the increase.

2. In the case of less-than-carload freight, no increase shall be assessed for hauls for which the applicable or corresponding class rates are assessed on a basis of not more than 175 miles, and the increase for hauls over 175 miles and not more than 250 miles computed in like manner shall be 1 cent per 100 pounds.

3. Where rates are stated in schedules in dollars per car and the increase, as shown above, is an amount per 100 pounds, the increase shall be $7.50 per car if such amount per 100 pounds is 1 cent, and $10.00 per car if such amount is 2 cents.

4. In the case of rates on petroleum products and on furniture, covered by the orders in No. 17000, parts 4, 4A, and 5, they shall not, on and after the dates when the rates covered by such respective orders become effective, exceed the maximum rates therein prescribed.

SWITCHING AND LIGHTERAGE CHARGES

All switching charges may be increased 10 per cent, subject to the exception that in the case of the Chicago switching district (Illinois-Indiana) the charges, on and after the date when the rates covered by the order in No. 19610 become effective, shall not exceed the maxima therein prescribed.

JOINT RATES TO AND FROM FOREIGN COUNTRIES

It is not intended to increase the proportions of joint through rates to or from points in foreign countries accruing for the transportation in such foreign countries; the proportions of such rates accruing within the United States may be increased to the extent herein approved for domestic rates.

BOAT LINES

The increases herein suggested may in like manner be applied to rates of the boat lines subject to the act.

240 COMBINATION RATES

It is the intention to authorize but one increase on any particular through shipment, however the total rate is constructed or ascertained.

FOURTH SECTION DEPARTURES

If the adoption of the different rates of increase herein suggested results in any violation of the aggregate-of-intermediates or long-and-short-haul provision of section 4 (1) of the act, the carriers should take prompt steps to remove the violation or promptly make applications for relief.

RATES PRESCRIBED AND NOT YET EFFECTIVE

It is contemplated that the increases herein set forth will be superimposed upon the rates now in effect, whether established by order of the commission or the voluntary act of the carriers (including rates held under investigation and suspension orders), and also upon rates prescribed by outstanding orders of the commission not yet in effect, when and as the rates therein prescribed become effective, subject to the exceptions noted above.

By the commission.
[SEAL.]

GEORGE B. MCGINTY,
Secretary.

241 *Exhibit 2 to answer*

17317

Interstate Commerce Commission

Fifteen Per Cent Case, 1931

Ex Parte No. 103

In the Matter of Increases in Freight Rates and Charges

Submitted November 28, 1931. Decided December 5, 1931

Upon further hearing of oral argument, former report, 178 I. C. C. 539, modified by vacating certain conditions attached to increases in rates authorized and by changing somewhat methods used in determining in each instance the amount of the increase.

Alfred P. Thom and J. M. Souby for Association of Railway Executives; Charles C. Paulding for Association of Railway Executives and New York Central Lines; Henry Wolf Biklé for committee of counsel for carriers; Luther M. Walter for New Orleans Public Belt Railroad; Charles E. Cotterill for Southern Traffic League; E. S. Gubernator for Lehigh Portland Cement Company; Herbert

Fitzpatrick for Association of Railway Executives; T. D. Geoghegan for Southwestern Virginia, Incorporated, and West Virginia Live Stock Growers and Shippers; John E. Benton and Clyde S. Bailey for legal committee of western group, State commissions; R. C. Fulbright for Southern Pine Association; C. R. Marshall for Growers & Shippers League of Florida; and John F. Finerty for American Smelting & Refining Company, Kennecott Copper Mining Company, and National Sugar Refining Company.

Other appearances shown in the original report.

Supplemental Report on Reconsideration

By the Commission:

In the original report in this proceeding, 178 I. C. C. 539, we found that carriers subject to the interstate commerce act should be authorized to make comparatively small increases in rates for the transportation of certain freight articles for the purpose of increasing their operating revenues and thereby improving their credit and to enable them to maintain an adequate transportation system. An extensive investigation made by us in the premises, in which hearings were held in different parts of the United States, established that, by reason of the present depression and the rapid development since the depression began of other transportation facilities with which the carriers have been and are in competition,
242 the revenues had become depleted to such an extent as to threaten the ability of the carriers to continue to furnish such transportation services as the public needs and must have. The freight articles selected by us in this connection were those for the transportation of which we believed the rates could be somewhat increased without causing the traffic to be transferred to other agencies of transportation and without bringing about an undue disturbance in business conditions or transgressing the bounds of maximum reasonable rates.

However, we further found that these increases were justified only as a temporary, emergency measure, and primarily and principally to assist some of the carriers in connection with the payment of their fixed charges. We therefore stated that the increases, in the absence of action to the contrary taken by us, should expire on March 31, 1933, and that meanwhile the income therefrom should be kept separate from other operating income of the carriers, placed in a pool, and used in connection with the payment of fixed charges and for other purposes as described in our original report. In this connection, among other things, we said:

"Some carriers have obligations that are already in default, some are now in receivership, and some derive less than 50 per cent of their revenue from freight transportation. Such carriers should neither contribute to, nor receive from, the fund created, and they should be allowed to retain the full amount of the revenue accruing to them from the increased rates. The applicants should set up the

machinery for operating and should operate the plan. At the end of six months or other appropriate interval, any balance remaining in the fund so created should be distributed to the carriers in the proportions in which earnings accruing on their properties have contributed to it.

"The increase provided for in the appendix will be conditional upon the submission by the carriers, on or before December 1, 1931, for our approval under the interstate commerce act, of such a plan as is above described for the division among them of the gross proceeds derived from the increase. The plan submitted should provide that the revenues received from such increases should be earmarked and should be used for the purposes and in the manner above provided, and not otherwise. The increases herein proposed should be accepted as an entirety. If, for competitive or other reasons, the carriers decrease any of the rates so increased, the amount of the decrease should be taken from the basic rates rather than from the earmarked increases provided herein. Upon such submission and approval, we shall grant the necessary authority under section 6 for filing the blanket supplements, and those will be permitted to take effect without suspension, subject to the proviso that we shall reserve discretion to require minor changes in the details thereof; and that the resulting rates will in all respects be subject to investigation and determination as to the lawfulness of particular rates or schedules of rates, as provided by the act."

Our original report was issued October 16, 1931, and thereafter the carriers filed in our office a petition, in which they alleged, in substance, that the pooling plan provided for by us could not as a practical matter be applied, and requested us to permit them to
243 substitute therefor what has been referred to in this proceeding as a loaning plan, that is to say, they asked for permission to use the sums of money to be placed in a pool as aforesaid for the purpose of making loans, through an agency to be created by them, for the payment of fixed charges, etc., as had been described by us. They also asked us to make a few other comparatively unimportant changes in our original report.

After due notice to interested parties they were heard by us in oral argument in connection with the matters covered by the petition, and at that hearing counsel for the carriers contended that the impracticability of putting in force the pooling plan outlined by us results principally from the lack of authority on the part of representatives of some of the carriers to treat sums of money received for transportation services performed by such carriers as the property of other carriers and allow the latter to use those sums in paying their fixed charges. Pertinent language used by counsel for the carriers in this connection is:

"Many of the directors of these railroad companies have been advised by their counsel that a vote to dispose of the earnings in question as a gratuity would, or might, render such directors personally liable to any objecting stockholder, and, in fact, there is substantial

reason to apprehend that an effort to do so would at once be enjoined by stockholders and the whole matter be thrown into court, with a consequent delay that would in itself defeat the Commission's purpose."

Counsel for the carriers also pointed out that, in connection with the subject matter of pooling, the only authority specifically conferred upon us is contained in section 5 (1), which reads:

"SEC. 5. (1) That, except upon specific approval by order of the commission as in this section provided, and except as provided in paragraph (16) of section 1 of this act, it shall be unlawful for any common carrier subject to this act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid each day of its continuance shall be deemed a separate offense: *Provided*, That whenever the commission is of opinion, after hearing upon application of any carrier or carriers engaged in the transportation of passengers or property subject to this act, or upon its own initiative, that the division of their traffic or earnings, to the extent indicated by the commission, will be in the interest of better service to the public, or economy in operation, and will not unduly restrain competition, the commission shall have authority by order to approve and authorize, if assented to by all the carriers involved, such division of traffic or earnings, under such rules and regulations, and for such consideration as between such carriers and upon such terms and conditions, as shall be found by the commission to be just and reasonable in the premises."

244 Upon this subject, counsel for the carriers, among other things, said:

"That paragraph contemplates a pooling, under certain conditions, of the earnings of "competing" carriers—of carriers which, for purposes of economy, parcel out between them services which all might perform, and justify it by pooling and dividing among them the revenues derived from all the services so parceled out. On the other hand, the pool here is to be contributed to by all the rail carriers, whether competing or not, and is clearly not a pool of the earnings only of competing carriers or of carriers bearing the same or similar relationship to the service. It not being within that section, there is not authority in law for such a pool, and the question of its legality must be determined on general legal principles."

In addition to making contentions as above stated, counsel for the carriers urged that use of the loaning plan will enable the carriers to accomplish the purposes we had in view when we provided for the use of the pooling plan, and at the same time enable the carriers to avoid the legal difficulties necessarily connected with the latter plan. Contrary views were expressed by counsel representing some of the

shippers, but no such opposition was voiced by counsel representing any carrier subject to the interstate commerce act. In this connection, it will be observed that the rates to be paid by shippers will be the same under either plan.

We are not prepared to admit that the construction placed upon section 5 (1) of the act by counsel for the carriers is correct, but we realize that the language contained in that paragraph is not sufficiently definite to exclude differences in views concerning its meaning, and that for this reason the legal difficulties mentioned have at least some foundation upon which to rest. Also, we have no reason for treating otherwise than as made in good faith the representations on behalf of the carriers to the effect that they will use the sums of money, which are to be placed in a pool as hereinbefore stated, to accomplish the purposes described in our original report. It is further true that we are impressed by the absence, on behalf of any carrier, of opposition to the loaning plan mentioned. In addition to the above, we believe it to be pretty clearly indicated, by matters called to our attention in oral argument and otherwise developed in the course of this proceeding, that an agreement to adopt and put in force the pooling plan provided for by us can not be obtained, and in the absence of such an agreement our plan could not be made effective, since, as above shown, we have no authority to require such pooling.

For the reasons above set forth, and because we desire to act promptly in this proceeding, in accordance with the duties imposed and the authority conferred upon us by the interstate commerce act, and avoid delays which will be injurious to the general public,
245 including the carriers, we hereby modify our original report to the extent of relieving the carriers from the necessity of complying with the pooling plan therein described. This will leave them free to apply in the premises their own loaning plan, but since use of the latter plan will not be pooling, within the meaning of that term as used in section 5 (1) of the interstate commerce act, and because loans by and between common carriers, as such, have not been included within the jurisdiction conferred upon us by Congress, we neither approve nor disapprove either the loaning plan or the agency the carriers say they expect and intend to use in making that plan effective. However, we rely on them to apply the funds to be derived from the authorized increases in rates in aid of financially weak railroads in accordance with the purposes expressed in our original report and in the instant application pursuant thereto and the arguments thereon presented.

We also hereby amend our original report to the extent of relieving the carriers from the restriction contained in language hereinbefore quoted which is as follows:

"* * * The increases herein proposed should be accepted as an entirety. If, for competitive or other reasons, the carriers decrease any of the rates so increased, the amount of the decrease

should be taken from the basic rates rather than from the earmarked increases provided herein. * * *"

Objection has been raised to the imposition of the so-called double increase where there are movements subject to the act separated by an intermediate movement not subject to the act. This applied particularly to movements of ore and coal through lake and ocean ports. There are practical difficulties in the way of accomplishing this by general provisions such as are made in this report. Therefore shippers and carriers are left free to endeavor to work out the situation between themselves.

In the appendix under the caption "Switching and lighterage charges" we authorized certain increases for switching only. The omission of lighterage and floatage charges from the increases so authorized was unintentional. The same increases for these charges as for switching are authorized in the revised appendix hereto.

Because of certain practical difficulties that exist in determining distances and in view of the smallness of the increases, we have concluded, upon more mature consideration, to authorize an increase of 2 cents in all less-than-carload rates.

In the revised appendix hereto the articles originally made subject to increases of $3 and $6 per car have been made subject to increases in cents per 100 pounds or per ton, the assignment of the respective commodities to the respective lists having been made on an approximate-weight basis.

246 The revised appendix also makes certain changes in the classification of commodities, the desirability of which has become apparent since our original report was issued.

LEE, Commissioner, concurring specially:

It was our view when the original report was adopted that, while the carriers had signally failed to justify their application for a horizontal increase in freight rates, their credit situation justified us in permitting the establishment of certain increases to enable the weaker roads to meet their interest requirements. We, therefore, told the carriers that we would permit them to make certain specified rate increases on condition that the funds realized therefrom should be pooled for the benefit of the weaker roads, to the extent of their interest requirements.

The carriers now represent that there are certain legal objections to the conditions imposed by us for the distribution of the pooled earnings, and ask authority to make such distribution on a loan basis. To meet the emergency which now confronts the railroads, I am firmly convinced that our plan is preferable to the loan plan proposed by the carriers. It is evident, however, that there is such opposition to our plan that the carriers will not be able to put it into effect. In this situation some of my brethren adhere to our original report. There is much in reason to support their position. On the other hand, the majority allows the increased rates to be established without the imposition of any condition. After we

found that no increase had been justified and permitted the establishment of slight increases only on the express condition that the earnings produced thereby would be used, to the extent necessary, to meet interest requirements and protect railroad credit, the majority now allows the increases without any condition or restrictive requirement whatever. As between these extremes, it is my position that, in view of the conditions in which the railroads find themselves, we should grant their application to the extent of permitting them to make the increases specified on condition that they loan to the needy carriers such portion of the fund resulting therefrom as may be necessary to meet interest charges. It seems to me, however, that such loans should be made at a nominal rate of interest and without security.

EASTMAN, Commissioner, dissenting:

The vital purpose which we sought to accomplish in the general interest through the pooling plan set forth in our prior report can not be accomplished nearly as well by the plan which
247 the carriers propose. Nor, since the majority now leave the latter plan wholly within the discretion of the carriers, is there definite assurance that the purpose will be accomplished at all. No occasion exists for beating such a retreat. Our plan is both lawful and reasonable. There is no sound reason for discarding it in favor of the inferior substitute which is now proffered.

Owing to the brevity of the majority report, it is necessary to supply pertinent information in this opinion, in order that the essential issues may be understood.

The original application of the carriers was for authority to increase all interstate freight rates and charges 15 per cent. We reached the conclusion, upon the evidence presented, that such an increase "would increase revenues, if at all, only temporarily and that its ultimate effect, not very long postponed, would be to harm rather than help the railroads." We also concluded that "such an increase would raise the rates upon many kinds of traffic above a just and reasonable level." For these reasons the application was denied.

We pointed out, however, that it did not follow that no increase in rates should be made at this time. Some important increases we had already authorized, to become effective shortly. We stated our further belief that the—

"traffic departments of the railroads should address themselves to the task of making such changes in the rates on particular kinds of traffic as will, in their judgment after careful analysis of all attendant circumstances, produce additional revenue and which can be supported as reasonable under existing conditions."

If tariffs were filed, in accordance with this suggestion, we said that we would be—

"guided, in determining whether they shall be suspended, not only by the statements filed in support and protest, but also, in part, by our

general knowledge and the record in this proceeding as bearing on the particular kind of traffic in question."

To the extent that suspension proceedings might be initiated, we promise to expedite their disposition.

Under ordinary circumstances, upon such a record as was before us, we would have stopped at this point and with this suggestion. It gave the carriers opportunity to mend the deficiencies of their case and propose increases, or other changes in rates, which could be justified. It gave assurance, also, that such proposals would receive sympathetic and expedited consideration. This opportunity still stands and will remain open.

248 THE POOLING PLAN

But circumstances were not ordinary, and therefore we did not stop with this suggestion. We made a further proposal "for the consideration of the railroad executives in the immediate emergency, and only as a temporary measure of relief." It was motived by the thought that the—

"distrust of railroad securities is rapidly gaining such elements of panic that a slight charge on the traffic of the industries of the country best able to stand it may justifiably be imposed, through freight rates, for the purpose of increasing confidence and averting developments which might further disturb an already tremendously shaken financial situation, and to avoid impairment of an adequate system of transportation."

The plan was designed as an emergency measure in the hope that it would help the general financial situation with benefit to all concerned, and it sought to produce the maximum effect of this character consistent with the imposition of minimum burdens upon distressed industry and minimum disturbance of business conditions. To this end it appealed to a spirit of cooperation on the part of both shippers and carriers.

We did not propose increases in all rates, but only where we thought the burden could reasonably be borne with limited danger of diversion of the traffic to other forms of transportation. Nor did we propose increases in ratio to transportation service performed. To minimize disturbance of business conditions, we suggested increases on particular kinds of traffic which would be, generally speaking, in uniform amounts. Thus the short-haul shipper was asked to bear a much larger increase, in ratio to existing rates and transportation service rendered, than the long-haul shipper.

In like spirit of cooperation the railroads were asked to agree to a pooling plan. The emergency was a financial one and affected credit primarily. This had been stressed both by the carriers and by their security holders. The earnings of some of the carriers were ample to sustain their credit, and as to them, considered individually, no emergency existed. It was created by the needs of carriers less fortunate but which, like the others, were essential parts of the

national transportation system. Except for the danger confronting these less fortunate carriers, our emergency rate proposal would not have been made.

We thought it proper and appropriate, therefore, to ask all the carriers to agree to a plan whereby the funds derived from the emergency increases would be used in the first instance to poultice the sore spots which threaten the health of the national transportation system. We did not, however, seek to bring the carriers to any-
249 thing like a common level of earnings or to deprive those which were more prosperous of direct benefit from the increases. The pooled earnings were to be applied in the first instance merely to the prevention of defaults in fixed charges. The remaining balance, which we estimated would be substantial, was to be distributed in ordinary course. Moreover, being an emergency measure, the pool was limited to a period ending March 31, 1933.

We made no finding that the rates resulting from the increases proposed would be just and reasonable. No such finding was necessary. Following submission of the pooling plan and its approval by us, we said that we would grant the necessary authority under section 6 for filing blanket supplements, and that those would be permitted to take effect without suspension, upon the understanding, however, "that the resulting rates will in all respects be subject to investigation and determination as to the lawfulness of particular rates or schedules of rates, as provided by the act." The plan, in short, was regarded as something apart from our ordinary rate procedure, adapted to an emergency use for the benefit of all concerned, and to be made effective through such a spirit of cooperation as might reasonably be expected in a time of distress. It has been received in this spirit by the shippers of the country.

THE CARRIERS' PLAN

The carriers are averse to accepting the plan in the form in which it was proposed, and in the petition now presented ask that we approve a new and different plan, which they say will accomplish the same ends. There has as yet been no final and definite refusal to accept our plan, but it is said that the modification suggested "will relieve legal difficulties which are regarded as substantial by those responsible for the management of the carriers and will remove serious obstacles in the way of carrying the plan into successful operation."

The carriers do not in terms propose their plan as a new and different plan, but contend rather that it is consistent with one of two possible interpretations of our suggestion. These two interpretations, according to their petition, are:

"One, that the amounts arising out of the increase in the rates scheduled, in the appendix to the report, to be increased, are, to the extent necessary to carry out the plan, to be distributed to certain

of the participating carriers as gratuities, and the other that such amounts may be treated as loans."

Neither of these interpretations is correct. It was not our thought that the distributions to be made out of the pooled funds to certain carriers were to be treated as loans, nor is there anything in our
250 discussion of the matter which is susceptible of such an interpretation. Neither did we regard these distributions as gratuities. On the contrary, our thought corresponded with that of the Supreme Court in New England Divisions case, 261 U. S. 184, 196.

"It is not true, as argued, that the order compels the strong railroads to support the weak. No part of the revenues needed by the New England lines is paid by the western carriers. *All is paid by the community* pursuant to the single rate increase ordered in *Ex Parte 74*. [Emphasis supplied.]

Briefly, the new and different plan proposed by the carriers is that a corporation, to be called the Railroad Credit Corporation, shall be created under a Delaware charter for the purpose of collecting, receiving, and administering the fund derived from our proposed rate increases. All rail or water carriers, rates of which are subject to our jurisdiction, may file tariffs providing for these increases, and all carriers by railroad may by assent participate in the plan, except such as are already in default as to their fixed charges or in receivership or which derive less than 50 per cent of their revenues from freight transportation. The plan is to become effective "only when those who have assented thereto all agree that a sufficient number have assented to make it practically operative." It might thus become operative without the assent of all eligible carriers, in which event those not assenting would gain full benefit from the rate increases without assumption of any obligation with respect to the weaker carriers.

The participants will be obligated to turn over to the corporation within specified times the gross revenue received from the rate increases, subject to a right of refund for any tax payment because of such receipt. The corporation, it is asserted, will use the fund to carry out our "purpose to prevent so far as practicable defaults by railroad companies in their fixed charges." To that alleged end it will be its duty, upon application of any participating carrier, to loan it such amount as may be necessary for this purpose. But this duty is subject to substantial qualifications.

No loan is to be made to a carrier "which is able to meet its fixed charges from its earnings, other income or other resources," or which, "with the aid of the loan from the corporation, would still be unable to meet its fixed charges or to avoid a default," or which has not complied with its obligations relative to payments to the fund. In determining the amount of the deficiencies in the earnings of an applicant and the necessity for making it a loan "the amount actually expended for maintenance (but not the amount charged to

operating expenses on account of depreciation and retirements) in the period from July 1, 1930, to June 30, 1931, shall be used as the maximum of its maintenance charges, unless, in the discretion
251 of the corporation, a different period should in a special case be justified." Interest is to be charged "at the then current rediscount rate of the Federal reserve bank in the New York district," such rate to be adjusted quarterly. The loan is to fall due at such time as may be agreed upon, not exceeding two years, but may be renewed for an additional period of not exceeding two years, "at the discretion of the corporation." In making loans, the corporation "shall take as security the best available collateral, including, if required by the corporation, the pledge of the amounts due or to become due an applicant" on distribution of the fund to the participating carriers. The corporation is given discretion, however, "in the case of any important public interest," to relax these security requirements.

It is conceded that under the proposed provisions the corporation will have a large element of discretion in the making of loans to participating carriers, and also in their collection and the terms and conditions attached to the loan. It is also conceded that this discretion is such that no participating carrier could compel the making of a loan by mandamus.

The corporation is required, by the terms of the agreement, to make monthly reports to us "of its receipts, loans, and disbursements, together with a summary of its current financial condition," and we may also require it to render other periodical reports, and have access to its books and records for inspection and audit. We shall have no statutory authority whatever over the corporation.

In presenting our plan, we said that "appropriate provisions should be made as to the accounts of carriers reporting separately but operated as part of a system." The thought was that deficiencies in earnings should be treated from the point of view of system results, instead of dealing separately with individual carriers constituting parts of a system. In the carriers' plan, every participating carrier which makes a separate operating report to us, and which otherwise qualifies, will have the right to apply for and receive loans.

At least once in every six months, the corporation is to review its needs for funds to carry out and accomplish its purposes, and in the event of a balance over and above requirements, "such balance shall be distributed to the participating carriers in the proportion in which their respective earnings," allowing for interest on delayed payments and tax refunds, "contributed to the fund." The obligation to pay into the fund is to continue "until such payments shall have been made in respect to all traffic moved up to and including March 31, 1933," and the corporation is to function thereafter for such time as may be necessary to collect all outstanding loans,
252 make distribution of remaining funds to the participating carriers, and wind up its affairs.

While the corporation is to be organized "primarily" for the purpose above stated, its charter is of the Delaware type and exceedingly broad, authorizing it, for example, "to invest, trade, deal in and deal with goods, wares, and merchandise and real and personal property of every class and description." It has all the usual "holding company" powers. The stock is limited to 12 shares of the total par value of $1,200, but apparently no difficulty would be experienced in increasing, by amendment, this authorized amount. Eleven shares are to be held by the Association of Railway Executives and one share, by the American Short Line Railroad Association. There are to be 12 directors, 5 to be nominated by participating carriers of the eastern district, 3 by such carriers of the western district, 2 by such carriers of the southern district, 1 by the American Short Line Railroad Association, and 1 by the stockholders. In making nominations, participating carriers are to have voting power in ratio to their contributions to the fund.

POOLING IN THE PAST

Before considering the carriers' objections to our proposed pooling plan, it may be well to say something about pooling as it prevailed in the past. In the 20 or more years preceding the enactment of the act to regulate commerce in 1887, it was common practice for the carriers to pool traffic or earnings. This was a period of intense and often disastrous railroad competition. Rate wars were frequent, published rates were not observed, and flagrant discriminations prevailed. To alleviate this competition and prevent it from becoming destructive, pools were established.

Some of these were traffic pools, but others were pools of earnings. The attempt was to divide competitive traffic or the earnings therefrom in the percentages which rival routes would enjoy under assumed conditions of normal competition. In the case of a traffic pool, the endeavor was to give each route, by diversions if necessary, its agreed percentage of actual traffic. Where earnings were pooled, each road sought to handle all the traffic which it could obtain, but a large portion, usually more than half, of the revenue collected therefrom was turned over to the pool, and these pooled earnings were divided in the agreed percentages. It, therefore, came about that one road might eventually receive substantially more and another road substantially less revenue than it collected.

There was a doubt whether these pooling agreements could, because of considerations of public policy, be enforced in
253 court, and that doubt hampered their successful operation; but they were widely resorted to and often were effective. Section 5 of the original act to regulate commerce, however, prohibited contracts or agreements of carriers "for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any

portion thereof." The decision in United States v. Trans-Missouri Freight Assn., 166 U. S. 290, made it clear that such agreements are also unlawful under the Sherman Antitrust Act of 1890.

For some years after the approval of the act to regulate commerce in 1887 the carriers were insistent that the anti-pooling provision of section 5 was the chief error in that act, and that if pooling were permitted under public supervision the then existing evils in the railroad situation, which included financial impoverishment, would largely be eliminated. They repeatedly sought an amendment of the act to that effect, but no change was made until 1920 when, upon our recommendation, we were given authority in the transportation act, 1920, to approve pooling agreements under certain conditions, such an approval operating as a bar against all statutory prohibitions or restraints, State or Federal. Since this amendment, however, we have been asked to approve such agreements only in a very few instances of limited scope. The extent to which pooling, once predominant in railroad thought, has been forgotten in the home where it was born is indicated by the fact that in the argument on the pending petition counsel for the Association of Railway Executives stated that he was not familiar with the character of the pools which existed prior to 1887.

LEGAL OBSTACLES

So much for history. The legal obstacles which are alleged to stand in the way of the acceptance of our plan are indicated in the majority report, but for convenience the statement of counsel for the executives upon this point is also reproduced here:

"Many of the directors of these railroad companies have been advised by their counsel that a vote to dispose of the earnings in question as a gratuity would, or might, render such directors personally liable to any objecting stockholder, and in fact, there is substantial reason to apprehend that an effort to do so would at once be enjoined by stockholders and the whole matter be thrown into court, with a consequent delay that would in itself defeat the commission's purpose."

None of these opinions, said to have been given by counsel, was presented for our consideration.

It is also argued that our approval of the proposed pool would not affect its legal status, inasmuch as it is not the case of such
254 a pool as is contemplated by section 5 (1) and as we have specific authority to approve. The argument, as also indicated in the majority report, is thus stated:

"That paragraph contemplates a pooling, under certain conditions, of the earnings of 'competing' carriers—of carriers which, for purposes of economy, parcel out between them services which all might perform, and justify it by pooling and dividing among them the revenues derived from all the services so parceled out. On the other

hand, the pool here is to be contributed to by all the rail carriers, whether competing or not, and is clearly not a pool of the earnings only of competing carriers or of carriers bearing the same or similar relationship to the service. It not being within that section, there is not authority in law for such a pool, and the question of its legality must be determined on general legal principles."

It is further asserted that even if this were not the case, it would make no difference, because the effect of our approval is merely to prevent the pool "from being a violation of law and thus an offense against the Government," and not to "change or to modify the fiduciary relationship between the stockholders of a company and its directors."

Considering first the argument as to the application of section 5 (1), it is obvious that under any conception of competition a competitive relation exists between many of the carriers which would participate in the proposed pool, and that if such conception be enlarged, as it must necessarily be, to include the competition of carriers which serve producers or communities competing in a common market, that relation exists as to most, if not all, of the participating carriers. Of this latter form of competition, we said, in City of Spokane v. N. P. Ry. Co., 21 I. C. C. 400, 414:

"Strictly speaking, there is no such thing as market competition which is distinct from competition between the lines of transportation serving the market. A market can only compete through the agency which transports for it. The carrier makes a rate from a given market, not out of favor to that locality but because it desires to obtain traffic which will not otherwise come to it. There would seem, therefore, to be little distinction between the competition of markets and the competition of rival railroads."

Nor should it be forgotten that the group system of rate making authorized by section 15a, under which certain carriers may receive revenue in excess of their needs, is justified in paragraph (5) of that section by the general existence of competitive conditions and the fact that it is—

"impossible (without regulation and control in the interest of the commerce of the United States considered as a whole) to establish uniform rates upon competitive traffic which will adequately sustain all the carriers which are engaged in such traffic and which are indispensable to the communities to which they render the service of transportation, without enabling some of such carriers to receive a
255 net railway operating income substantially and unreasonably in excess of a fair return upon the value of their railway property held for and used in the service of transportation, * * *."

It is clear that in view of the competitive relation which exists between most, if not all, of the participating carriers, the pool which we proposed would not be lawful without our approval under section 5 (1). The carriers have themselves on two separate occasions sought and obtained our approval under that paragraph of pooling arrange-

ments which comprehended carriers by railroad generally throughout the country, rather than groups of parallel and competing lines. Express Contract, 1920, 59 I. C. C. 518; Securities and Acquisition of Control of Ry. Exp. Agency, 150 I. C. C. 423.

Apart from the above considerations, which are sufficiently controlling, it is significant that the proviso portion of section 5 (1), which empowers us to authorize pooling under certain conditions, does not confine applications for such authority to competing railroads. On the contrary, we may act upon the application "of any carrier or carriers engaged in the transportation of passengers or property subject to this act," and all that it is necessary for us to find is that the contemplated division of traffic or earnings, to the extent which we indicate, "will be in the interest of better service to the public, or economy in operation, and will not unduly restrain competition." It is a reasonable inference that Congress, by this use of broader and more comprehensive language in the proviso than in the original prohibition, sought to eliminate technical questions of jurisdiction such as the carriers now seek to raise.

Such a pooling arrangement as was suggested in our prior report is manifestly one which we have specific authority to approve under section 5 (1).

Let us turn, then, to the question of the fiduciary relation of directors to stockholders and the danger that such a pool as we propose would be enjoined by the latter as a breach of trust. It is clear that in the old pools of earnings which existed prior to 1887 a carrier might ultimately receive either more or less revenue that it actually collected for service performed. From this it might be argued that those who received less were extending gratuities to those who received more. The reply which counsel for the executives makes to this suggestion is that such division of earnings was based on a contract made valid by the consideration that all members of the pool received direct financial benefits from it. He asserts that in contrast all participants in our proposed pool would not receive such benefits, or at least none which constitutes in law a valuable consideration.

It is plain that in the old pools the benefits which accrued to those who contributed more revenue than they ultimately received
256 were only such benefits as might be gained from greater stability in rates and the lessening of the danger of destructive competition. Under our proposed pool the benefits would be, first, the probable receipt by all the participants of greater revenue, following the ultimate distribution of the fund, than they now enjoy, and, second, positive protection, so long as the pool continued, against a very possible series of railroad receiverships which would further disturb the financial situation, destroy returning confidence, and postpone the day when railroad traffic, earnings, and credit generally will be restored to normal status. Who will venture to say that the benefits to be derived by all of the railroads, both strong and weak, from our proposed pool are not as direct and substantial as were

derived by member carriers from the pools of earnings which prevailed in times gone by?

Moreover, even if there were any validity in this contention with respect to the fiduciary relation of directors to stockholders, the question may properly be asked whether it would be any more of a breach of trust to give funds to distressed carriers than to make loans of the same funds to such carriers on terms of security and interest rate which no responsible financial institution would be justified in accepting? Yet it is precisely such loans which would be available, in case of need, if the carriers' plan is to accomplish in all instances, as they contend, the same purpose of avoiding defaults in fixed charges and bankruptcies as we sought to accomplish through our plan. It must be borne in mind, in this connection, that under their plan the carriers propose to make loans only to carriers which are unable to meet their fixed charges from "earnings, other income or other resources."

There remains to be stated, however, the main and controlling reason for believing that our proposed plan would be sustained by the courts if, perchance, there should be stockholders willing in a time of general distress and need for mutual cooperation to incur the odium of seeking to enjoin it. This reason lies in the fact that the plan is in entire harmony with the concept and spirit which underlie the transportation act, 1920, as it has been interpreted by the Supreme Court. In that act, Congress for the first time dealt with the railroads, not alone as individual entities, but also as parts of a national transportation system to be adequately maintained in the interest of the whole country. It saw that these parts were interrelated, that they were mutually dependent upon each other, and that the transportation service which the country required could not be adequately maintained unless the whole of which they were parts, i. e., the national transportation system, was recognized and protected as such. As the court said in Dayton-Goose Creek
257 Ry. v. U. S., 263 U. S. 456, 478, the act "adds a new and important object to previous interstate commerce legislation." It "seeks affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country." It was therefore held in that case, among other things, that an individual shipper, because of his interest in the adequate maintenance of "all the railroads necessary to do the business of a rate territory or section," could not complain of a general level of rates higher than would be reasonable considering the immediate service rendered to him alone.

But for present purposes the decision of the court in the New England Divisions case, supra, is of even greater significance. That case dealt with divisions of joint rates, and not with a pooling plan, but our order with respect to divisions was most strenuously resisted upon the ground that we had been moved to our action by the financial needs of the New England lines, and that such needs were wholly irrelevant in determining the shares of the joint rates

to which the participating carriers were justly entitled. The court stated this contention thus, at page 189:

"It is contended that the order is void, because its purpose was not to establish divisions just, reasonable, and equitable, as between connecting carriers, but, in the public interest, to relieve the financial needs of the New England lines, so as to keep them in effective operation."

Our order could, in our judgment, have been sustained upon the ground that it was not dependent upon the financial needs of the New England lines but sufficiently supported by other facts. Significantly, however, the court saw fit to find affirmatively that we were justified in taking these financial needs into consideration. Quoting from the Dayton-Goose Creek case, supra, at page 477:

"In the New England Divisions case, 261 U. S. 184, it was held that under section 418 the commission in making division or joint rates between groups of carriers might in the public interest consult the financial needs of a weaker group in order to maintain it in effective operation as part of an adequate transportation system, and give it a greater share of such rates if the share of the other group was adequate to avoid a confiscatory result."

The reasoning which supported this conclusion is, however, the vital thing, and we quote that reasoning from the New England Divisions case, supra, as follows, at pages 190–191:

"The credit of the carriers, as a whole, had been seriously impaired. To preserve for the Nation substantially the whole transportation system was deemed important. By many railroads funds were needed, not only for improvement and expansion of facilities but for adequate maintenance. On some continued operation would be impossible, unless additional revenues were procured. A general rate increase alone would not meet the situation. There was a limit to what the traffic would bear. A five per cent increase had been granted in 1914, Five Per Cent case, 31 I. C. C. 351;
258 32 I. C. C. 325; fifteen per cent in 1917, Fifteen Per Cent case, 45 I. C. C. 303; twenty-five per cent in 1918, General Order of Director General, No. 28. Moreover, it was not clear that the people would tolerate greatly increased rates (although no higher than necessary to produce the required revenues of weak lines) if thereby prosperous competitors earned an unreasonably large return upon the value of their properties. The existence of the varying needs of the several lines and of their widely varying earning power was fully realized. It was necessary to avoid unduly burdensome rate increases and yet secure revenues adequate to satisfy the needs of the weak carriers. To accomplish this two new devices were adopted: the group system of rate making and the division of joint rates in the public interest. Through the former, weak roads were to be helped by recapture from prosperous competitors of surplus revenues. Through the latter, the weak were to be helped by preventing needed revenue from passing to prosperous connections.

Thus by marshalling the revenues, partly through capital account, it was planned to distribute augmented earnings, largely in proportion to the carrier's needs. This, it was hoped, would enable the whole transportation system to be maintained without raising unduly any rate on any line. The provision concerning divisions was, therefore, an integral part of the machinery for distributing the funds expected to be raised by the new rate-fixing sections. It was, indeed, indispensable."

Attention is called to the emphasis, in the passage above quoted, upon the need for "marshalling the revenues * * *, largely in proportion to the carrier's needs." This was necessary to "avoid unduly burdensome rate increases and yet secure revenues adequate to satisfy the needs of the weak carriers." It was pointed out that a "general rate increase alone would not meet the situation"; that there was a "limit to what the traffic would bear"; and that the people might not "tolerate greatly increased rates" for the mere purpose of sustaining weak lines if the result were to increase the revenues of the prosperous carriers unduly.

It is manifest that this description fits the present situation far more closely than it did that which then existed. The need for such a distribution of earnings is far greater now than it was then. In 1920 there was little question about the ability of traffic to bear large increases in rates, although the court seems even then to have been impressed with the doubt on this point. Now we have overwhelming evidence of the inability or refusal of traffic to bear any very substantial increases. Clearly it is essential in the interests of all, including the railroads, to keep any increases down to the absolute minimum. On the other hand we have a situation where the needs of many railroads are so pressing and critical that unless they are relieved, defaults and receiverships may ensue which may spread an already impending panic like a prairie fire. Obviously the conditions described by the court in the New England Divisions case are present now in extreme form.

The point may be illuminated by further quotations from the court's decision. On page 195 it considered the contention
259 "that if the act be construed as authorizing such apportionment of a joint rate on the basis of the greater needs of particular carriers it is unconstitutional." The argument was "that the division of a joint rate is essentially a partition of property; that the rate must be divided on the basis of the services rendered by the several carriers; that there is no difference between taking part of one's just share of a joint rate and taking from a carrier part of the cash in its treasury; and, thus, that apportionment according to needs is a taking of property without due process." But, said the court, "the argument begs the question. What is its just share? It is the amount properly apportioned out of the joint rate." That amount "is to be fixed by the commission; fixed at what that board finds to be just, reasonable, and equitable." And the court concluded

its discussion of this point with the following significant statement: "Whether the rate is reasonable may depend largely upon the disposition which is to be made of the revenue derived therefrom."

It is true that the court mentioned only two ways of meeting the problem of the weak lines. One was the group system of rate making and recapture, and the other was the "division of joint rates in the public interest." It did not mention a pooling plan such as was proposed in our prior report. But when the decision in the New England Divisions case was reached, the possibilities of pooling had not been developed. Moreover, the fact was not then appreciated that the division of joint rates is a most imperfect way of meeting the problem. For example, the Pocahontas lines profited more than any other from the group system of making rates in the eastern district; yet they contributed little or nothing to the New England lines through the increase in divisions. These coal roads secure a very large proportion of their ample revenues from purely local rates to tidewater and the lakes. Moreover, adjustment of divisions, due to the complexities involved and the time which must be consumed before an order can be issued, is a process not at all adapted to an emergency situation such as now exists.

It is submitted that the pooling plan which we proposed is consistent throughout with the reasoning of the court in the New England Divisions case, and at the same time adapted to the existing emergency. That case settled the proposition that the mere fact that a carrier collects certain revenue does not make it the owner, and that it may lawfully be required to turn over to another carrier a portion of that revenue which is not justified alone by the service which that other carrier performs and can be fully justified only by consideration as well of its financial needs. It is submitted, also, that if it is lawful to require a carrier to dispose in this way, through a divisional arrangement, of revenue which it has collected, it is lawful to permit it to accomplish a similar result, particularly in a time of emergency, through a pooling arrangement. The justification lies fundamentally in the concept of a national transportation system, of which all the carriers are mutually dependent parts, and the need for maintaining that system adequately.

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It is suggested that in the New England Divisions case the court held that divisions can not be prescribed which will produce a "confiscatory result" for any carrier, and that our plan would accomplish such a result, in view of the fact that many of the carriers which would contribute rather than receive are not now earning a fair return. This suggestion overlooks the fact that present low earnings are due to lack of traffic rather than inadequate rates; that no carrier under our plan would receive less than it now receives; and that in all probability all the carriers would enjoy a gain in revenue. It is a singular thought to regard such a result as "confiscatory."

Summing up the situation, upon analysis the alleged legal obstacles to our plan prove to be without substance. Considered apart

from our approval under the statute, there is ample legal consideration for the proposed agreement. When, however, there is also taken into consideration our approval of the plan under specific authority of law, based on a finding that it will be in the interest of better service to the public, will not unduly restrain competition, and will afford necessary safeguards in a financial emergency affecting all of the carriers, directly or indirectly, and this approval is coupled with the fact that the plan is in entire harmony with the concept and spirit underlying the transportation act, 1920, as interpreted by the Supreme Court, it is impossible to be impressed with the fear that it would be held to violate fiduciary relationships, or that it would even be contested on that ground.

QUESTION OF EXPEDIENCY

There remains to be considered the plea that the plan which the carriers propose will accomplish as well as our plan the results which we contemplated, and that no reason exists, therefore, why it should be rejected in favor of a plan which it may prove impossible to carry through. This plea is without merit. The first and foremost reason is that there is no assurance whatever that it will accomplish what we intended.

It is conceded that the contemplated loans, as the agreement is drawn, will lie largely in the discretion of the corporation, a non-carrier company subject under the law to no public regulation or supervision whatsoever. It is conceded that no needy carrier
261 can compel a loan through mandamus or other legal process, and that the discretion with respect to the qualifications of the applicant for a loan and the security which it will be called upon to furnish is such that the exercise of this discretion one way or the other could not be called in question.

And even if the loans are made, the resulting situation will be quite different from what would result under our plan. Under the latter the obligations of the needy carrier would be reduced. Its fixed charges would be met without use of its credit or collateral or the assumption of any additional interest payments. Under the carriers' plan there will be no reduction of obligations; on the contrary, they will be increased. Fixed charges may be met, but only by the assumption of a new and different indebtedness accompanied by depletion of collateral and ensuing interest payments. The carrier may be tided over an immediate danger of default, but only at the expense of a further attenuation of its credit and a mounting indebtedness. The time when, if ever, it can regain its financial health will be postponed materially beyond the time which would be possible under our plan. It is not difficult, however, to understand why the weaker lines should hesitate to antagonize the stronger lines and the railroad financial fraternity by supporting our plan at this time.

In addition, the introduction into the situation of this unregulated private Delaware corporation with its vast potential powers is something which it is difficult to view without foreboding and apprehension. The possibilities of discrimination in the treatment of needy carriers for ends which may appeal to the dominating carriers as desirable are sufficiently evident. Other possibilities, extending beyond any present anticipation, are manifold and inherent in the plan. It is impossible to approve such a plan as in the public interest, even if there were any assurance that it will accomplish the immediate ends which we have in mind, an assurance which is utterly lacking.

It is clear from the report of the majority that they realize the imperfections of the loaning plan and its inferiority to our pooling plan from the point of view of practical accomplishments. They are careful to disclaim either approval or disapproval of the loaning plan or of "the agency the carriers say they expect and intend to use in making that plan effective." The final result is that the proposed rate increases are approved unconditionally, coupled with an expression of expectation or hope that the funds derived therefrom will be used "in aid of financially weak railroads."

The motive behind this action is evidently fear that if the commission should adhere to the pooling plan, that plan might
262 be rejected and the commission thereupon be held responsible for financial difficulties which might then ensue. It is submitted that there is no solid ground for such fear. The carriers have been very careful to refrain from any final rejection of our plan; they have contented themselves with a presentation of the legal obstacles said to stand in the way of its acceptance. In view of the above discussion of these alleged obstacles, it may be asserted with confidence that under all of the circumstances there would be no final rejection in the conditions which now exist. But even if this were not so, it is submitted that the sole responsibility of this commission is to propose a lawful and reasonable plan which will meet the situation effectively. If the carriers should be unwilling to accept such a plan in the spirit of cooperation in a time of national distress which the shippers have already manifested, that would be their responsibility, not ours.

Apart from the fact that a sound plan is being exchanged for an inferior substitute, it is a matter of great regret that the carriers have shown an inability to grasp the idea which the Supreme Court has recognized and voiced with such clarity and strength, namely, that the railroads are interrelated and mutually dependent parts of a national transportation system. There has never been a time when a spirit of mutual cooperation and solidarity were more essential to the welfare of the industry. The time has surely come for the railroads, as it came for the sovereign States, "to form a more perfect Union" which will "insure domestic Tranquility, provide for the common defence, promote the general Welfare." If our plan had

been accepted in the spirit in which it was suggested and put promptly into effect, certain recent and unfortunate developments in the railroad financial situation might have been averted.

I am authorized to say that Commissioners McManamy, Porter, and Mahaffie join in this expression of dissent.

APPENDIX

PLAN FOR INCREASING FREIGHT RATES

In the tables which follow the numbered generic descriptions of commodities or commodity groups are those specified in the order of the commission, division 4, of November 22, 1927, In the Matter of Freight Commodity Statistics. Except as otherwise provided and except where prefixed by circled "1," they cover the specific items customarily included by the carriers in their reports to the commission under each numbered description. Where prefixed by circled "1," the designated descriptions apply only on the commodities specifically here named.

263 LIST A

On commodities, in carloads, except as otherwise noted, included under the following descriptions there shall be no increase:

No.	Description
10	Wheat.
20	Corn.
30	Oats.
40	Barley and rye.
41	Rice.
42	Grain, n. o. s.
50	Flour, wheat.
51	Meal, corn.
52	Flour and meal, edible, n. o. s., except cassava flour, sago flour, and tapioca flour.
61	Mill products, n. o. s., except alfalfa meal.
70	Hay and alfalfa.
71	Straw.
90	Cotton in bales, any quantity.
91	Cotton linters, noils, and regins.
100	Cottonseed.
120	Apples, fresh.
122	Berries, fresh.
124	Grapes, fresh.
125	Peaches, fresh.
127	Fruits, fresh, domestic, n. o. s.
130	Potatoes, other than sweet.
150	Beans and peas, dried.
162	Flaxseed.
163	Sugar beets.
164	①Products of agriculture, n. o. s., as follows: Corn cobs; corn-cob meal; corn husks or shucks; corn stalks; flaxseed hulls.
170	Horses, mules, ponies, and asses.
180	Cattle and calves, single deck.
181	Calves, double deck.
190	Sheep and goats, single deck.
191	Sheep and goats, double deck.
200	Hogs, single deck.
201	Hogs, double deck.
400	Logs.
402	Wood (fuel).
410	Ties, railroad.
443	①Excelsior (wood), wood shavings, n. o. i. b. n., and sawdust.
701	①Cotton waste, other than manufactured packing or wiping waste.

LIST B

On commodities, in carloads, included under the following numbered descriptions there may be an increase of 6 cents per ton of 2,000 pounds:

No.	Description
290	Anthracite coal.
300	Bituminous coal.
310	Coke.
320	Iron ore.
330	Copper ore and concentrates.
331	Lead ore and concentrates.
332	Zinc ore and concentrates.
333	Ores and concentrates, n. o. s.
350	Gravel and sand (other than glass or molding).
351	Stone broken, ground, or crushed; coated sand; and coated rock road-building material.
392	①Products of mines, n. o. s., as follows:
	Borate rock.
	Bituminous rock.
	Bituminous asphalt rock.
	Iron pyrites.
	Limestone, crushed or ground.
	Dolomite.
	Earth or soil, no. o. i. b. n.
	Feldspar.
	Fluorspar.
	Fluxing stone.
	Ganister rock.
264	Glass sand.
	Crude gypsum.
	Loam.
	Molding sand.
	Nickel matte.
	Ore residue.
	Slate, crushed, ground, or scrap.
	Volcanic ash.
420	Pulpwood.
491	①Mill cinder and mill scale, iron or steel.
692	Furnace slag.
701	①Pyrites cinder, refuse, or dross.
701	①Coal ashes and cinders.
701	①Brickbats and brick dust.

LIST C

On commodities, in carloads, included under the following numbered descriptions there may be an increase of 12 cents per ton of 2,000 pounds:

No.	Description
352	Stone, rough, n. o. s.
390	Phosphate rock, crude (ground or not ground).
391	Sulphur (brimstone).
392	①Products of mines, n. o. s., as follows:
	Bentonite.
	China clay.
	Ground flint.
	Fire clay.
	Gilsonite.
	Ground gypsum, not calcined.
	Kaolin.
	Barium sulphate, ground (barytes), not precipitated.
	Barium sulphate, ground (barytes), precipitated (blanc fixe).
	Magnesium sulphate, crude, or kieserite.
	Mica scrap or screenings.
	Pipe clay.
	Shale.
	Slate, not crushed, ground or scrap.

No.	Description
362	①Products of mines, n. o. s., as follows—Continued.
	Soapstone (talc) ground, dust, lump, or rough slabs.
	Chalk, crude.
	Clay, n. o. i. b. n.
	Cobblestones.
	Flint pebbles.
	Marble chips.
401	Posts, poles and piling.
430	Lumber (made of domestic or Canadian wood or Mexican pine only).
430	Lath and shingles.
431	Box, crate, and cooperage materials.
432	Veneer and built-up wood, made wholly of domestic or Canadian wood or Mexican pine.
443	①Products of forests, n. o. s., as follows:
	Acid wood.
	Barks—
	Black oak (stick).
	Cedar, shredded.
	Hickory, not ground or powdered.
	Redwood, shredded.
	Tanbark—Leaf (stick); Ground, spent, or not spent.
	Wood-charcoal briquettes.
	Brush, riprapping.
	Charcoal, wood.
	Chemical wood.
	Chips (shavings), brewers' or vinegar.
	Cigar-box wood.
	Cones, fir or pine.
	Cork dust (cork-bark refuse).
	Cork chips, shavings, virgin bark, waste or refuse.
	Palm kernels.
	Pine needles.
	Shingle tow or shavings.
490	Pig iron.
603	Scrap iron and scrap steel.

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LIST D

On commodities, in carloads, except as otherwise noted, included under the following numbered and unnumbered descriptions there may be an increase of 1 cent per 100 pounds:

No.	Description
80	Tobacco leaf, unmanufactured, any quantity.
101	Cottonseed meal and cake.
110	Oranges and grapefruit.
111	Lemons, limes, and citrus fruits, n. o. s.
123	Cantaloupes and melons, n. o. s.
126	Watermelons.
140	Cabbage.
141	Onions.
142	Tomatoes.
143	Vegetables, fresh, n. o. s.
151	Fruits, dried or evaporated.
152	Vegetables, dried, n. o. s.
160	Vegetable-oil cake and meal, except cottonseed
161	①Peanuts, raw.
164	①Products of agriculture, n. o. s., as follows:
	Alfalfa seed.
	Apple waste.
	Apricot kernels.
	Bagasse.
	Barley or grain skimmings, malthouse.
	Barley sprouts.
	Bean meal (ground beans), n. o. i. b. n.
	Beans, soya.
	Beet pulp or residue.
	Broomcorn.
	Cane seed.
	Chufas.
	Clover seed.
	Cocoa-bean refuse (cocoa dust).
	Copra.

No.	Description
104	①Products of agriculture, n. o. s., as follows—Continued.
	Cowpeas.
	Cucumbers in tank cars.
	Fenugreek seed or meal.
	Fodder, n. o. i. b. n.
	Fruit pits or stones, n. o. i. b. n.
	Fruit peel, not candied or crystallized.
	Fruit pulp.
	Grains, spent, dry or wet.
	Grass seed.
	Hemp stalks.
	Kapok seed or kapok-seed meal.
	Malt, malted grain or malt sprouts.
	Meal, alfalfa, clover, peanut vine, or sorghum; or chopped alfalfa.
	Millet seed.
	Mustard seed.
	Pea meal.
	Peanut grits.
	Peanut hulls or chaff.
	Pomace, n. o. i. b. n.
	Rape seed or rape-seed meal.
	Sorghum seed or meal.
	Tobacco stems, ground or unground.
	Tomato refuse (from canneries).
	Unmanufactured tobacco cuttings, siftings, scraps, or sweepings.
	Velvet beans or velvet-bean meal.
353	Stone, finished, n. o. s.
360	Petroleum, crude.
370	Asphalt (natural, by-product, or petroleum).
440	Rosin.
441	Turpentine.
443	①Pine tar.
450	Petroleum oils, refined, and all other gasolines.
451	Fuel, road, and petroleum residual oils, n. o. s.
452	Lubricating oils and greases.
453	Petroleum products, n. o. s.
540	Cement, natural or Portland (building).
550	Brick, common.
551	Brick, n. o. s., and building tile.
552	Artificial stone, n. o. s.
560	Lime, common (quick or slacked).
630	Ice.
640	Fertilizers, n. o. s.
697	Building woodwork (millwork).
701	②Soapstone forms or slabs, including fire box or furnace linings.
701	①Tar, and pitch, except brewers' and montan.
701	①Feed, animal or poultry, n. o. i. b. n., and not including biscuits, dog (dog cakes).

266 On all other commodities, including all less-than-carload freight, there may be an increase of 2 cents per 100 pounds.

The increases set forth above are subject to the following provisos:

1. In no event shall the increase levied on any shipment be in excess of 10 per cent of the charges which would be assessed in the absence of the increase.

2. Where rates are stated in schedules in dollars per car the respective increases shall be $7.50 per car if the increase, as shown above, is 1 cent per 100 pounds; $10 per car if such increase is 2 cents per 100 pounds; $3 per car if such increase is 6 cents per ton; and $5 per car if such increase is 12 cents per ton.

3. Shipments of petroleum products and furniture, moving under rates the same as or less than those prescribed or approved in No. 17000, parts 4, 4-A, and 5, shall not be subject to any surcharge under these findings, on and after the dates when the rates covered by said findings become effective. When shipments of such commodities move under combination rates all factors of which are not filed in compliance with the decisions in No. 17000, the above authorized increases will apply to the through movement.

4. Where through shipments move under combination rates subject to the interstate commerce act, but one increase may be applied on such shipments. This proviso does not apply where there are two movements subject to the act separated by an intermediate movement not subject to the act. Where shipments move under transit on a basis which applies a through rate (either with or without a transit or out-of-line charge) the increase or surcharge should be applied but once.

Where the minimum weights are different in connection with the separate factors in combination through rates, the increase shall be based on the highest minimum, unless a lower total results from applying the above authorized increases separately to each factor or any aggregation of factors, subject to the minimums attaching thereto.

Weights.—The increases authorized shall apply to the weight on which the charges are based.

Mixed carloads.—Mixed carload shipments shall be subject to the highest surcharge provided for any article in the carload, except where a lower total results by surcharging a portion of the shipment as less than a carload and the remainder as a carload.

Switching, floatage, and lighterage charges.—All switching, floatage, and lighterage charges collected from shippers or receivers may be increased 10 per cent, subject to the following exceptions: (a) in the case of switching charges in the Chicago switching district (Illinois-Indiana) such charges, on and after the date when the rates covered by the order in No. 19610 become effective, shall not exceed the maxima therein prescribed; and (b) no increase shall apply on articles in list A.

Joint rates to and from foreign countries.—It is not intended to increase the proportions of joint through rates to or from points in foreign countries accruing for the transportation in such foreign countries; the proportions of such rates accruing within the United States may be increased to the extent herein approved for domestic rates.

Carriers by water.—Where rates of water carriers are subject to the act, covering transportation either wholly or by water or partly by water and partly by railroad, the increases herein suggested may in like manner be applied to such rates.

267 Fourth-section departures.—If the adoption of the different rates of increase herein suggested results in any violation of the aggregate-of-intermediates or long-and-short-haul provision of section 4 (1) of the act, the carriers should take prompt steps to remove the violation or promptly make applications for relief.

Rates prescribed and not yet effective.—It is contemplated that the increases herein set forth will be superimposed upon the rates now in effect, whether established by order of the commission or the voluntary act of the carriers (including rates held in effect by reason of investigation and suspension orders), and also upon rates pre-

scribed by outstanding orders of the commission not yet in effect, when and as the rates therein prescribed become effective, subject to the exceptions noted above.

By the commission.

[SEAL.] GEORGE B. McGINTY,
Secretary.

268 *Exhibit 3 to answer*

269 [Omitted.]

270 Before the Interstate Commerce Commission

Docket No. 17304

INTERNATIONAL OIL COMPANY, ET AL.

vs.

ABILENE & SOUTHERN RAILWAY COMPANY, ET AL.

PETITION TO REOPEN FOR REHEARING, REARGUMENT, AND RECONSIDERATION ON THE FINDINGS OF PAST UNREASONABLENESS AND REPARATION AND COMPLAINANTS' REPLY TO PETITION BY CARRIERS FOR REHEARING AS TO FINDINGS OF FUTURE UNREASONABLENESS

Come now the complainants in the above-styled proceeding and respectfully petition the commission to reopen this case for a rehearing, and, or, reargument and reconsideration of the findings made by the commission on the issue of past unreasonableness and reparation and in support of said petition respectfully show:

I

The commission's last decision herein rendered under date of December 1, 1931, but not served until December 16, 1931, insofar as it deals with the issue of past unreasonableness, presents a most remarkable paradox.

271 This case was originally heard October 23–26, 1925. The examiner who originally heard the case filed his proposed report July 25, 1926, finding that the rates were unreasonable per se for the future. The commission decided the case on March 5, 1928, finding that the rates were unreasonable for the future to practically the level found by the examiner. The complainants filed a petition to rehear May 21, 1928, which was denied February 20, 1929. A second petition was filed April 19, 1929, which was granted and pursuant thereto the case was reheard January 14–15, 1930. Pursuant to this rehearing the examiner filed his tentative report on April 29, 1930, in which he found that the rates prescribed by the commission which had been in effect since June 14, 1928, were and had

been unreasonable since that date to the basis of reasonable rates for the future which he recommended. The commission by its last decision herein dated December 1, 1931, pursuant to the evidence offered upon the rehearing, found that the rates which had been published by the carriers pursuant to its former decision and which had been effective since June 14, 1928, were unreasonable for the future by substantial amounts.

Thus it is seen that since this complaint was filed July 15, 1925, four reports have been made upon the evidence of record. Twice has this case been considered by the examiners of the commission and twice the commission itself has reviewed the record. In every one of these decisions beginning with the first tentative report which was filed July 25, 1926, the rates attacked were found unreasonable.

In spite of this history dating back for more than five years, the commission in its last decision fails to find the assailed rates unreasonable in the past except in isolated instances which have
272 no bearing upon the general level of rates under attack. If over a period of five years the rates originally attacked in this proceeding have been found unreasonable by successively greater amounts every time the case has been considered, it certainly would seem that the commission's decision refusing to find that the rates were ever unreasonable in the past is a paradox that cannot be justified upon this record.

The following table shows the rates originally attacked; the specific reasonable rates recommended by Examiner Fleming July 25, 1926; the rates resulting from the first decision of the commission and made effective June 14, 1928; the rates recommended by Examiner Boat April 29, 1930, and finally the rates resulting from the commission's final decision to which this petition is addressed:

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	July 15, 1925	July 25, 1926	June 14, 1928	April 29, 1930	Mar. 15, 1932
	1	2	3	4	5
NORTH DAKOTA					
Grenora	116	94	95		85
Beach	113		94	72	82
Williston	111		88	72	85
Crosby	110½		93	71	84
Dickinson	107		86	68	78
Bowman	105		103½	69	75
Bowbells	101½		91	68	82
Antler	99		88	63	80
Lansford	98		90	63	82
Max	97½	84½	85		75
Bismark	93		82	59	70
Minot	92	80½	81	61	75
Rugby	89½		77	61	73
Bisbee	88		82	61	72
Walhalla	86		80	62	72
Copperstown	84		80	59	67
Devils Lake	83½	74½	74	61	70
Grafton	81		78	61	67
Jamestown	81		76	57	63

	July 15, 1925	July 25, 1926	June 14, 1928	April 29, 1930	Mar. 31, 1932
	1	2	3	4	5
NORTH DAKOTA—continued					
Hannaford	76		72	58	63
Valley City	76		74	58	61
Grand Forks	75½		70	59	62
Oakes	73½		73	58	58
Fargo	70	65	62	57	57
Wahpeton	65½	60½	60	56	55
MINNESOTA					
Thief River Falls	74		74	60	63
Halstead	71	67	70		60
Bemidji	70½		67	59	60
Glyndon	69½		67	57	57
Detroit Lake	67		65	57	57
Grand Rapids	64		67½	59	60
Fergus Falls	64		61	56	56
Wadena	62½		62½	56	54
Brainerd	60½		61	56	54
Hibbing	59½		59	59	59
Morris	58		54	54	50
Appleton	58		49½	54	49½
Sauk Center	56		59	55	56

1. Rates attacked.
2. Unreasonableness found by Examiner Fleming.
3. Unreasonableness found by commission's first report. The commission actually fixed rates to only 18 destinations out of 836 involved.
4. Unreasonableness found by Examiner Boat upon rehearing.
5. Unreasonableness found by commission upon rehearing.

Examiner Fleming fixed rates to only eight points and Examiner Boat did not fix rates to three of the points used by Examiner Fleming, which explains the blank spaces in columns two and four.

274 Take Grenora, the first point listed in the table. The rate attacked to Grenora was 116 cents. On July 25, 1926, Examiner Fleming found that that rate would be unreasonable for the future to the extent it exceeded 94 cents. The commission on March 5, 1928, found upon a record that had been closed since October 26, 1925, that the rate would be unreasonable for the future to the extent that it exceeded 95 cents. Upon rehearing in its last opinion the commission finds that the rate is unreasonable to the extent that it exceeds 85 cents, making a total reduction in the rate to Grenora of the difference between $1.16 and 85 or 31 cents. Can it be possible that with these findings of record that it can rightly be said, speaking as of December 1, 1931, upon a record closed January 15, 1930, that at no time in the past were the rates to Grenora unreasonable?

Next take Minot; the rate originally attacked was 92 cents. Examiner Fleming on July 25, 1926, found that the Minot rate was unreasonable for the future to the extent that it exceeded 80½ cents. On March 5, 1928, the commission found upon a record that had been closed since October 26, 1925, that the rate to Minot would be unreasonable for the future to the extent it exceeded 81 cents. On April 29, 1930, Examiner Boat found that the rate to Minot was unreasonable to the extent it exceeded 61 cents. And on December 1, 1931, upon a record upon rehearing that had been closed since January 15, 1930, the commission finds that the rate to Minot is unreasonable to the extent it exceeds 75 cents, making a total re-

duction of 17 cents. Certainly in the face of such findings of record it is paradoxical to hold that the rates attacked to Minot were not unreasonable in the past.

The two points just mentioned are typical of all of the
275 points listed in the table and the table is typical of the entire destination territory involved. It is important to note that the commission has found that the record in the case shows that the rates under attack were unreasonable to every point in the destination territory involved. This is not a case where a general readjustment of rates is made involving increases as well as reductions.

The striking chronology of this case for the ready reference of the commission is summarized as follows:

July 15, 1925, complaint filed.

October 23–26, 1925, first hearing and record first closed.

July 25, 1926, Examiner Fleming's tentative report finding all of the rates attacked unreasonable "for the future."

March 5, 1928, commission's first decision finding rates unreasonable "for the future" but not in the past, although the evidence upon which this finding must be based is in a record that had been closed since the hearing October 26, 1925.

January 10, 1929, order reopening case for unlimited and unconditional rehearing.

January 14–15, 1930, rehearing and record closed for second time.

April 29, 1930, Examiner Boat's tentative report finding that the rates in effect since June 14, 1928, the effective date of the rates published by the carriers pursuant to the commission's first decision had been and for the future would be unreasonable by substantial amounts.

December 1, 1931, commission's decision upon rehearing finding that effective "March 15, 1932", the rates in effect since June 14, 1928, would be unreasonable "for the future" but not unreasonable in the past.

276 No one can read this chronology without recognizing the paradox.

How can rates be found successively unreasonable by greater amounts and still not have been unreasonable at sometime in the past?

And stranger still, how can the commission keep a case under submission with the record closed, from October 26, 1925, when this case was first heard, until March 5, 1928, when its first decision was rendered, a period of over two years and five months, and find the rates unreasonable for the future but not in the past, although for the period stated the record had been closed?

Again upon the rehearing the record was closed January 15, 1930, yet the commission under date of December 1, 1931, finds that the record closed January 15, 1930, shows that rates will be unreasonable effective March 15, 1932, but not unreasonable in the past.

Such findings are plainly arbitrary. They evince a clear failure to enforce the reparation sections of the act which each commissioner has sworn that he will enforce.

Can democracy endure under such an enforcement of the laws?

Are we capable of self-government if the tribunals which the people set up for their protection and for the enforcement of their statutory rights, set themselves against the very laws they are sworn to enforce?

It is not believed that the commission intended to place itself in the unjustifiable position that its findings in this case relative to past unreasonableness, leave it.

II

277 The commission's finding with respect to past unreasonableness is contrary to the order reopening this case for rehearing and is without evidence of record to support it.

The commission in disposing of the issue of past unreasonableness at sheet 8 of its opinion says:

"The rates prescribed in our former report must be regarded as reasonable maxima from the time of their establishment to the effective date of the order to be issued in connection with this report."

If the rates resulting from the commission's former report "must be regarded as reasonable maxima from the time of their establishment to the effective date of the order to be issued in connection with this report" then the complainants have not been accorded a rehearing on the question of past unreasonableness pursuant to the commission's order of June 10, 1929, reopening this case for unlimited rehearing and reconsideration on the question of the reasonableness of the rates published by the carriers pursuant to its former decision in this case for the period from June 14, 1928, to March 15, 1932.

The commission's order of June 10, 1929, reopening this case is in terms as follows:

"Upon consideration of complainants second petition to reopen, the above-styled proceeding is reopened for, rehearing, and further consideration of the record herein:

"It is ordered that this proceeding be, and it is hereby, reopened for further hearing.

"By the commission:

"(Signed) GEORGE B. MCGINTY, *Sec.*

"[SEAL.]"

278 If the commission will refer to the complainants' second petition to reopen for rehearing dated April 19, 1929, pursuant to which this case was reopened as stated in the commission's order, just quoted, it will be noted that the petition was not only addressed

to the level of rates prescribed for the future but for a reconsideration on the question of past unreasonableness and reparation.

If the level of rates to which exception was taken by the complainants' second petition " must " be regarded as reasonable maxima from June 14, 1928, when the level became effective pursuant to the former decision of the commission, then there has not been a rehearing accorded complainants on that level since that date. The effective date of the commission's order for the future pursuant to its rehearing, is March 15, 1932. On that date the commission says that the rates which became effective June 14, 1928, will be unreasonable for the future. Now what of this period of almost four years between those two dates? What does the evidence of record show? Manifestly the evidence of record establishes that the rates published effective June 14, 1928, were unreasonably high, otherwise the commission would not have any possible justification for reducing those rates as it is doing effective March 15, 1932. If the evidence of record supports the commission's finding that the rates are unreasonable then there can not be any evidence of record to support the commission's finding that throughout this period the rates have not been unreasonable. The rehearing in this case was held June 14–15, 1930. The record in this case was closed and no evidence has been offered since the date of the rehearing. All of the evidence offered at the rehearing reflected past conditions and was addressed to the
279 level of rates which became effective June 14, 1928, and which had been charged since that date and to the higher level of rates charged prior thereto.

Upon such a record complainants respectfully insist that there is no evidence of record to support the commission's finding in this case that the rates under attack were not unreasonable in the past.

It must be recognized by the commission that its order reopening this case for further hearing and reconsideration is absolutely unlimited.

The finding of the commission that the level of rates which became effective June 14, 1925, " must " be regarded as the reasonable maxima from that date until March 15, 1932, is not a finding that is required by the decision of the Supreme Court in Arizona Grocery Company v. A. T. & S. F. R. Co., — U. S. —, 76 L. ed. 185. In that case the Supreme Court held that where the commission had prescribed reasonable maximum rates it could not thereafter in another proceeding find that the rates which it had prescribed as unreasonable in the previous proceeding were thereafter unreasonable and award reparation.

The holding in the Arizona Grocery Company case is wholly inapplicable to the present case because the later decision of the commission in this case revising the level of reasonableness previously prescribed, was made in the same proceeding pursuant to an order reopening the case for an unlimited rehearing and reconsideration. In this connection the commission is respectfully asked to refer to

that section of the interstate commerce act relating to the granting of rehearings by the commission. Section 16 (a) is quoted in its entirety as follows:

280 "That after a decision, order, or requirement has been made by the commission in any proceeding any party thereto may at any time make application for rehearing of the same, or any matter determined therein, and it shall be lawful for the commission may otherwise direct; and if, in its judgment, after such rehear- therefor be made to appear. Applications for rehearing shall be governed by such general rules as the commission may establish. No such application shall excuse any carrier from complying with or obeying any decision, order, or requirement of the commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the commission. In case a rehearing is granted the proceedings thereupon shall conform as nearly as may be to the proceedings in an original hearing, except as the commission may otherwise direct; and if, in its judgment, after such rehearing and the consideration of all facts, including those arising since the former hearing, it shall appear that the original decision, order, or requirement is in any respect unjust or unwarranted, the commission may reverse, change, or modify the same accordingly. Any decision, order, or requirement made after such rehearing, reversing, changing, or modifying the original determination shall be subject to the same provisions as an original order." (Section 16a, interstate commerce act.)

The complainants would particularly call the commission's attention to the fact that this section provides that the decision, order, or requirement made after rehearing which reverses, changes, or modifies the original determination "shall be subject to the same provisions as an original order."

In connection with the consideration of the Arizona Grocery Co. case, it must also be noted that of the rates that became
281 effective June 14, 1928, the commission did not fix the rates to but 18 out of the 836 destinations involved. The commission prescribed rates to only certain "key points," leaving it to the carriers to extend rates to the other destinations on a related mileage basis. The rates actually checked in by the carriers as shown by the record upon rehearing actually reflected increases to 106 out of the 836 destinations. The commission has described these June 14, 1928, rates published by the carriers in purported compliance with the commission's directions, at sheet 7 of its second decision, as follows:

"The present rates grade up too rapidly beyond the gateways on the eastern border of the destination territory and as the State line is crossed from South Dakota into North Dakota; the key-point rates have frequently been blanketed back for long distances, resulting in abrupt jumps in the rates between adjoining stations; there are numerous fourth-section departures and other inconsistencies such as

higher rates to Jamestown and Bismarck than to Devils Lake and Minot, N. D."

It can not rightly be said that such rates are rates prescribed by the commission.

It must be recognized by the commission that its order of June 10, 1929, reopening this case for unlimited rehearing and reconsideration requires a reconsideration by the commission ab initio.

The commission's former decision of March 5, 1928, was served March 23rd. On May 21, 1928, the complainants filed their first petition to reopen for rehearing which was not denied until February 11, 1929, which order was not served until February 20, 1929. Thereupon the complainants, on April 19, 1929, filed their second petition to rehear, which was granted by the commission
282 under date of June 10, 1929. In the meantime the rates published in compliance with the first decision of the commission went into effect June 14, 1928. It was these rates against which the complainants were protesting by their petitions to rehear as a measure of past as well as future reasonableness. It is to be noted that the first petition was filed within the sixty-day limit from the service date of the commissions' first decision and that the complainants' second petition was filed within sixty days from the service date of the commission's order denying the first petition. The complainants have complied with every rule and regulation prescribed by the commission for the expeditious and orderly handling of matters before the commission and to now hold that the level of rates against which the complainants' petition to rehear was aimed "must" be taken as the reasonable maximum level of rates during the period of rehearing and up until March 15, 1932, is simply to deny the complainants the rehearing that has been ordered by the commission in this case.

The complainant would repeat that the finding of the commission denying reparation from the effective date of its previous findings, namely, June 14, 1928, is without evidence in the record to support it, because all of the evidence is aimed at the level of the rates which then became effective, and it is solely upon that evidence that the commission has found these rates unreasonable from and after March 15, 1932. If this evidence justifies the commission's measure of future rates, then there is no evidence of record to support this level of rates as a reasonable level to have applied since June 14, 1928.

The commission in considering the past unreasonableness of these rates seems to have overlooked entirely that the rehearing was
283 sought largely upon the fact that the level of rates to North Dakota resulting from the first decision was much in excess of that prescribed to South Dakota.

The commission at sheet 7 of its decision, among other things, says: "The rates to North Dakota especially are on too high a level compared with rates prescribed to South Dakota."

The South Dakota rates were fixed by the commission in the same decision in which it first dealt with the North Dakota rates. Both the South Dakota and North Dakota rates became effective June 14, 1928.

Now, upon rehearing the commission finds that it fixed the North Dakota rates on too high a level as compared with the rates it simultaneously fixed, effective June 14, 1928, to South Dakota.

Does not such a finding necessarily make the North Dakota rates unreasonable as compared with the South Dakota rates since June 14, 1928?

Likewise the commission in considering the past unreasonableness of the rates that became effective June 14, 1928, seems to have overlooked what it said about these rates. In its former decision the commission fixed key rates to only 18 destinations out of 836 destinations involved and directed the carriers to publish rates to the other destinations on a relative mileage basis. The commission notes at sheet 4 of its decision that the carriers proceeded to increase the rates to 106 out of the 836 destinations and at sheet 7 it further described these June 14, 1928, rates as follows:

284 "The record on further hearing demonstrates the necessity of a further revision of the rates assailed to bring about a reasonable and consistent adjustment. The present rates grade up too rapidly beyond the gateways on the eastern border of the destination territory and as the State line is crossed from South Dakota into North Dakota; the key-point rates have frequently been blanketed back for long distances, resulting in abrupt jumps in the rates between adjoining stations; there are numerous fourth-section departures and other inconsistencies, such as higher rates to Jamestown and Bismarck than to Devils Lake and Minot, N. Dak.; the rates to North Dakota especially are on too high a level compared with the rates prescribed to South Dakota; and those from Kansas City to North Dakota are generally higher than the Wyoming-Montana scale recently prescribed in Rates on Petroleum and its Products in Montana, 178 I. C. C. 707."

Certainly the commission can not justify the June 14, 1928, rates as not unreasonable for the period from that date up to March 15, 1932, in the face of the record in this case as so described by its own decision.

Complainants would respectfully repeat the commission's finding with respect to past unreasonableness is contrary to the order reopening this case for rehearing and is without evidence of record to support it.

III

As to the commission's finding that the rates that were charged prior to June 14, 1928, were not unreasonable, the complainants would first reiterate that the commission's order of June 10, 1929,

reopening this case for unlimited rehearing and reconsideration is an order that requires reconsideration of the issues presented in this case ab initio.

285 In order for the commission to find that the rates charged throughout the reparation period were not unreasonable to the same extent as the rates which the commission now finds are unreasonable for the future the commission must have in the record in this case evidence which demonstrates that a different and higher level of rates was warranted than the level published, effective June 14, 1928. The record in this case, the complainants respectfully insist, does not contain a scintilla of such evidence.

Instead this record shows that during this period the commission pursuant to a full investigation of the oil rates from the same origin territory right up to the eastern boundary of the destination territory here involved had found that such rates were uniformly too high and reductions ranging from 1 cent to 3 cents were ordered.

The complainants are well aware, as stated in the commission's last decision, that the commission has always viewed the reductions which it made to the Western Trunk Line points immediately east of the destination territory here involved were reductions brought about in prescribing a more reasonable relationship in the rates to these points as compared with other points in that part of Western Trunk Line territory. Waiving for the moment the principle that has been several times announced by the commission, namely, that the interstate commerce act recognizes no distinction between relative unreasonableness and intrinsic unreasonableness (see Wyoming Coal Co. v. Virginian Ry. Co., 98 I. C. C. 488, 497; Sioux City Chamber of Commerce v. B. & O. R. R. Co., 120 I. C. C. 7, 14), and admitting that the commission is justified in the view expressed that the

286 reductions made were forced because of consideration of relative unreasonableness rather than intrinsic unreasonableness, the complainants nevertheless respectfully insist that the commission must recognize that the rates to the gateway points that theretofore applied which were only from 1 cent to 3 cents higher and were rates which this commission prescribed as reasonable per se rates in 1915 in the original oil case, Midcontinent Oil case, 36 I. C. C. 109. The commission itself has recognized that that level of rates was established by it as reasonable per se. See White Eagle Oil and Refining Co. v. A. T. & S. F. Ry. Co., 163 I. C. C. 734. Now, starting with a basis of reasonable per se rates fixed by the commission itself up to the gateways, complainants respectfully submit that a basis of rates maintained to the destination territory here involved which was equivalent to the full combination of locals using the full fifth class rate beyond the gateway constituted a level of rates which should certainly attract the attention of the commission as an unreasonably high level of rates to apply on a commodity like oil which in so large a measure is used in the destination

territory by the farming industry in the operation of tractors and other farming power.

When the commission compares the per ton mile earnings under the rates that are attacked in this proceeding with the per ton mile earnings for the shorter distance under the reasonable per se rates which it itself prescribed up to the gateways, which per ton-mile earnings exceed those up to the gateway as noted by the commission by as much as fifty per cent, complainants respectfully submit that more compelling rate evidence could not be offered the commission on the question of past unreasonableness.

287 Complainants respectfully ask the commission to study the rate table as set forth heretofore in this petition which shows the rates originally attacked and paid throughout the reparation period up until June 14, 1928, as compared with the rates effective June 14, 1928, and as compared further with the rates which the commission has prescribed as reasonable per se in its last decision.

It is not possible for shippers to present a more convincing case on past unreasonableness of rates than has been presented upon the record in this case. These complainants respectfully beseech the commission to reexamine the facts and modify its decision.

These complainants are small independent oil jobbers who are furnishing the competition in the destination territory with the large entrenched oil companies who are marketing directly in the territory, such as Standard Oil Company of Indiana. They obtain their oil in large measure from the independent oil refiners located in the midcontinent field, and thereby furnish a market for these independent refiners in their competition with the refiners of the big entrenched oil companies. During all of this past period when the railroads have been enjoying the greatest prosperity in their history these small independent oil jobbers were paying transportation charges inordinantly in excess relatively of the charges which were being collected up to the gateways, which charges were concededly reasonable per se charges fixed by this commission itself back in 1915. If the rates are unreasonable now as found by the commission, then certainly these rates must have been much more reasonable relatively when they were paid during the peak of carrier prosperity.

288 Wherefore, petitioners pray that this case be reopened for rehearing and/or reargument and reconsideration on the question of past unreasonableness and reparation and that the com-

mission enter such further order or orders in the premises as to it may see reasonable and just.

Dated at Washington, D. C., February 13, 1932.

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289 BEFORE THE INTERSTATE COMMERCE COMMISSION

DOCKET NO. 17304

INTERNATIONAL OIL COMPANY, ET AL.

vs.

ABILENE & SOUTHERN RAILWAY COMPANY, ET AL.

COMPLAINANTS' REPLY TO DEFENDANTS' PETITION OF JANUARY 30, 1932 TO REOPEN FOR FURTHER HEARING AND POSTPONEMENT OF EFFECTIVE DATE OF ORDER OF DECEMBER 1, 1931

The defendants' petition to reopen for further hearing and to vacate or set aside or postpone the effective date of the order dated December 1, 1931 is presented under three separate sections. It will be noted, however, that Sections I and II are devoted to a discussion of the decline in carrier revenues, whereas Section III sets forth the contention with respect to the rates prescribed as compared with the rates formerly prescribed to South Dakota on the south and other territory in Western Trunk Line territory immediately adjacent on the east to the territory of destination here involved. The complainants in making reply will discuss these two matters under separate headings. It should be noted that while the petition is signed only by the attorneys for the delivering line defendants, it specifically states at page 2 that it is filed on behalf of "all other defendants herein."

290 CARRIER EARNINGS AND CHANGED ECONOMIC CONDITIONS AS GROUND FOR REHEARING

It is evident from the language used in Sections I and II of the petition that these defendants have in mind that they might be able to bring this case, insofar as rehearing is concerned, within the recent

decision of the Supreme Court in the Grain case. Atchison, T. & S. F. R. Co. vs. United States, U. S. 76 L. ed. 229. The defendants, however, do not cite that case. The language used in this petition is similar to some of the language used in the petition in the Grain case, supra, as indicated in the opinion of the Supreme Court, but it should be noted that this petition does not include many of the compelling allegations that were included in the petition involved in the Grain case as shown by the opinion of the Supreme Court. It is also to be noted that the Grain case was a Hoch-Smith investigation, whereas the present case is a simple complaint and answer case which has been heard throughout both originally and upon rehearing upon a separate record.

It is also to be noted that in the Grain case a " vast " territory was involved which included practically the entire grain rates area involving all of the carriers participating in the grain movement viewed from a national standpoint, whereas the movement of petroleum products involved in this case is but a small and isolated part of the total movement from the mid-continent field. It is also to be noted that whereas the revenues received by the carriers from grain involved in the Grain case constitutes a substantial part of the total revenues of such carriers, whereas the revenue on the relatively small volume of petroleum products here involved is only a very
291 small part relatively of the defendants' total revenue. It seems clear that the present is an " ordinary application for rehearing " as cited by the Supreme Court in its decision in the Grain case as distinguished from the rehearing there involved which concerned such a " vast territory " and many millions of dollars.

The basis for the petition is stated at page three in the following language:

" Since January 15, 1930, there have been material and important changes in the financial condition of the defendants and in the operating traffic and transportation conditions and economic conditions in the territory they serve, which are material to a determination of the propriety and legality of the rates prescribed by the order of December 1, 1931, herein, the effect of which will be to reduce materially the gross and net revenues of the defendants. These changed conditions have seriously and adversely affected and will continue seriously and adversely to affect the gross and net revenues of the defendants and their ability to furnish the public with the kind of service it requires."

It will be noted that while changed operating, traffic and transportation conditions and economic conditions are cited it is only the effect of these upon carrier revenues that is given as the basis for the petition.

It must be remembered that the commission is here dealing with rates upon a single commodity, namely, petroleum products. This is not a case involving the whole body of rates on all classes and commodities. It is not a case involving the entire movement of

petroleum products upon the line of these defendants but is a case involving only a part of the total petroleum products moving on the lines of the defendants, being that part only that is destined to a relatively small part of the destination territory served by them.

292 The commission has been confronted with this argument of reduced railroad earnings resulting from the prescription by it of reasonable per se rates upon a single commodity in a number of cases.

In this very case the same argument was made by the defendants when this case was first submitted following the first hearing and in response thereto the commission said beginning at the bottom of page 615 in its first report of this case (139 I. C. C. 605), as follows:

"In opposing reductions in the rates on petroleum and petroleum products from and to the various territories here under consideration, defendants call attention to the unsatisfactory earnings of certain of the interested lines. The Chicago, Milwaukee & St. Paul and Chicago & North Western, whose lines constitute the greater part of the railroad mileage of South Dakota, are especially mentioned in this connection. We are fully mindful of the revenue needs of these various carriers, but, as we have frequently said, lack of adequate revenue from operations as a whole affords no justification for unlawful rates on individual commodities." (139 I. C. C. 615.)

In complainants' reply to defendants' exceptions dated October 25, 1926, at page 4, they cited certain cases in which the commission had held that shippers complaining of the rates on a single commodity were entitled to reasonable per se rates thereon in spite of the financial condition of the railroads involved. See Railroad Commissioners of Florida vs. S. A. L. Ry. Co., 16 I. C. C. 1, 5; Phelps-Dodge Corporation vs. Director General, 57 I. C. C. 714, 718. And see also cases cited on the same point under note 59 at page 375 of volume 1, Interstate Commerce Acts Annotated. Also note 58 on page 373, note 57 on page 372, and note 56 on page 371.

293 The complainants in this connection would respectfully direct the attention of the commission to two decisions of the Supreme Court. In Minneapolis and St. L. R. Co. vs. Minnesota ex rel Railroad and Warehouse Comm., 186 U. S. 257, the Supreme Court held that in judging the propriety of certain reasonable per se rates fixed by the Minnesota Railroad and Warehouse Commission for intrastate application on coal, the return on the whole schedule affords no light on the reasonableness of a particular rate. And in Interstate Commerce Commission vs. Union Pacific R. Co., 222 U. S. 541 at page 549, the Supreme Court, speaking through Mr. Justice Lamar, said:

"Where the rates as a whole are under consideration, there is a possibility of deciding, with more or less certainty, whether the total earnings afford a reasonable return. But whether the carrier earned dividends or not sheds little light on the question as to

whether the rate on a particular article is reasonable. For, if the carrier's total income enables it to declare a dividend, that would not justify an order requiring it to haul one class of goods for nothing, or for less than a reasonable rate. On the other hand, if the carrier earned no dividend, it would not have warranted an order fixing an unreasonably high rate on such article." (222 U. S. 549.)

It must be remembered in passing upon this petition that the defendants have stressed throughout this case the deficiency of revenue from the entire volume of freight experienced by certain of the defendants notably the Milwaukee, the Rock Island, and the Chicago and North Western, as well as the failure of the rates as a whole to accord all of the defendants the annual return to which they are entitled under section 15A of the act. Upon
294 rehearing the defendants reiterated these claims as to revenue and introduced exhibits showing carrier earnings, etc. The statistical reports of these defendants will show that substantial increases have been made in surplus since 1923, the beginning of the reparation period here involved. And they also show that the defendants throughout this period paid out enormous sums in the aggregate as dividends after having paid all fixed charges and having set aside enormous sums for maintenance of both road and equipment. It was shown on record in this case as indicated at page 5 of the complainants' reply to defendants' exceptions dated October 25, 1926, that in the year 1925 the Great Northern earned net income available for dividends equivalent to 8.59 per cent on its outstanding capitalization and that the Northern Pacific in the same year earned net income 7.2 per cent on its entire outstanding capitalization, after the payment of taxes, interest on funded debt, etc.

It must also be remembered that in the Fifteen Per Cent case 1931, 178 I. C. C. 539, the commission fully considered the revenue requirements of these defendants along with those of all other railroads in the country and provided for meeting those requirements in connection with the whole adjustment of freight rates. If any further relief is required insofar as freight rate adjustments are concerned it must necessarily be accorded in connection with the whole fabric of rates rather than in connection with the isolated rates on one commodity moving to a restricted part of the territory served by particular defendants such as those presenting this petition.

It must also be remembered that the increased class rates prescribed for application in Western Trunk Line territory
295 together with the commodity rates which follow such class rates became effective only since December 3, 1931, and that the effect of these increased rates insofar as the revenue of these defendants operating in that territory is concerned, is a matter for future determination but such rates will undoubtedly serve to increase the revenues of these defendants particularly in view of the general increases also recently made applicable pursuant to Ex Parte 103.

The commission, in fixing the rates required by its order of December 1, 1931, in this case undoubtedly had in mind the competition

that must inevitably be made by reason of the pipe line that has been completed to the Twin Cities from the midcontinent field. Unless the through rail rates from the midcontinent field to the destination territory are fixed on a reasonable per se basis, this oil traffic will move to the Twin Cities by pipe line and it will only be the delivering carriers who are filing this petition who will receive any revenue out of the oil traffic and all of the other defendants in this case will be denied any revenue whatever out of this oil traffic. It is significant that the only counsel signing this petition are counsel for the delivering lines, which lines as stated before are the only lines that will profit if the rates are made so high that this traffic will move via pipe line to Minneapolis and be transported thence by rail to this destination territory.

The delivering line defendants at page 6 of their petition quote certain statistics purporting to show the number of cars of petroleum delivered by them at stations on their line in the destination
296 territory involved. It must be noted in connection with these figures that the carriers do not show what number of the cars mentioned originate in the midcontinent field. Under the present all rail rates the cost of transportation is so high as compared with the cost of moving the oil by pipe line to Minneapolis that much of the traffic has been moving that way with the delivering lines getting the rail haul at local rates from Minneapolis to destination.

The figures mean absolutely nothing, however, insofar as indicating that this oil traffic can stand the high railroad rates that have been applicable in the past and since June 14, 1928.

The fact that the number of cars delivered by two of the delivering line defendants slightly exceed for 1931 the deliveries made in 1930 does not indicate that the small independent jobbers who are the complainants in this case are in a prosperous condition. Even though the defendants could offer evidence that the complainants were and are prosperous, which of course they could not do because these shippers are suffering from the same economic deflation and depression that the railroads are experiencing, such prosperity would not be a tenable ground on which unreasonable high rates could be justified. The commission has many times considered such arguments made on behalf of railroads in other cases where efforts were made to get the commission to give its approval to rates that were in excess of reasonable per se rates on the ground that the shippers shipping on such rates were prosperous but the commission has always refused to accept such arguments in justification of rates in excess of reasonable per se rates. See note 152, page 433, Interstate Commerce Acts Annotated.

297 The defendants in further support of their petition advance the argument that if the rates on petroleum products under attack in this case are reduced to a reasonable per se level as found by the commission in its decision of December 1, 1931, such rates will inevitably precipitate demands for corresponding reductions in rates on petroleum products from other producing districts

to the same destination territory. This argument has been made by the defendants throughout this case.

The commission has considered the same argument in a number of other cases as digested under note 46, page 361, Interstate Commerce Acts Annotated. The long line of authorities there listed is relied upon by the complainants in answer to this argument of the defendants.

RATES TO SOUTH DAKOTA POINTS AND TO ADJACENT TERRITORY ON THE EAST

The defendants point out under Section III of their petition that the reductions in rates prescribed by the order of December 1, 1931, were manifestly brought about by the existence of substantially lower rates from the same origin territory to destinations in South Dakota and to the gateways on the eastern border of the destination territory in issue, all of which have heretofore been prescribed by this commission in other cases.

The defendants recognize that these rates to South Dakota and to the eastern adjacent territory should also be increased if the reductions prescribed by the order of December 1, 1931, are not made effective. But they do not point out that any petition has
298 been contemporaneously filed to reopen the cases in which these rates to the other territories were fixed effective June 14, 1928. It should be noted, however, that the defendants in the other cases did file petitions in those cases all of which received the full consideration of this commission and were denied. It is recognized by the defendants that the rates to the destination territory here involved cannot exceed relatively the rates prescribed from the mid-continent field to South Dakota and to the eastern adjacent territory and it is not contended that the rates prescribed by the commission in its order of December 1, 1931, are too low as compared with these other rates fixed by the commission since June 14, 1928, to South Dakota and eastern adjacent territory.

Under such admissions and under such a rate adjustment and in view of the basis upon which the rates prescribed by the commission in its order of December 1, 1931, were arrived at, namely, on the basis of the rates prescribed from South Dakota since June 14, 1928, and the rates up to the eastern adjacent territory, as has been stated by the defendants themselves, it would seem that the rates prescribed in this case cannot any longer be withheld from this destination territory while relatively lower rates prescribed by the commission are enjoyed by the adjacent territory on the south and on the east.

CONCLUSION

The complainants respectfully submit that the petition to reopen this case for further hearing and to vacate or set aside or postpone

the effective date of the order dated December 1, 1931, should be denied.

299 The complainants as petitioners also respectfully submit that this case should be reopened, however, on the question of past unreasonableness and reparation as set forth in their petition heretofore.

Dated at Washington, D. C., February 13, 1932.

Respectfully submitted.

KARL KNOX GARTNER,
Attorney for Complainants.
815 Fifteenth Street NW., Washington, D. C.

Of Counsel:

NEAL E. WILLIAMS,
Traffic Commissioner Chamber of Commerce,
Fargo, North Dakota.

ELWIN E. HADLICK,
President Northwest Petroleum Association,
628 Builders Exchange, Minneapolis, Minnesota.

T. A. DURRANT,
Traffic Manager Greater Grand Forks Traffic Association, Grand Forks, North Dakota.

[File endorsement omitted.]

300 In United States District Court

[Title omitted.]

Answer of United States of America

Filed April 18, 1932

United States of America, one of the defendants in the above-entitled cause, for answer to the petition filed therein against it answers and says:

I

United States admits for the purposes of this proceeding the truth of the allegations contained in the opening paragraph and in paragraphs numbered I, II, III, and IV of the petition, with these exceptions:

(a) United States alleges that the allegations contained in the third subdivision of said Paragraph II, and the second subdivision of said Paragraph III, and the allegations contained in the whole of said Paragraph IV are, even if true, incompetent, irrelevant, and immaterial to the issues laid by the petition, and contain matter which is not within this court's jurisdiction to consider in its judicial review of the order of the Interstate Commerce Commission complained of in the petition. But if said matter should become competent, relevant, or material, United States will, upon the trial hereof, demand of petitioners strict proof of said allegations.

II

United States, for answer to Paragraph V of the petition, admits that on July 15, 1925, there was filed with said commission a complaint entitled and docketed as No. 17304, International Oil Company et al. v. Abilene & Southern Railway Company et al., and further admits that the allegations, things, and conclusions alleged in said paragraph with respect to the statements and allegations made and contained in said complaint are substantially true.

301

III

Answering Paragraph VI of the complaint, United States admits that said commission on May 10, 1926, made and filed its report in a proceeding entitled No. 15584, Midcontinent Oil Rates, 1925, a copy of which report is annexed to and made a part of the petition as Exhibit A, which said report embraced and included certain other proceedings described on the first page of the report in said Exhibit A, which several proceedings had been consolidated for decision upon one record, and the complaints in which together brought into issue the lawfulness under sections 1, 2, and 3 of the interstate commerce act of rates on petroleum products between the points described in said Paragraph VI. But United States denies that the remaining allegations of said Paragraph VI contain a full, accurate, or complete statement of the commission's findings and conclusions and statements made and contained in said report, and for a full, complete, and accurate statement of the findings and conclusions stated by the commission in said report and the facts on which said findings and conclusions were made, United States respectfully refers the court to said Exhibit A to the petition.

IV

United States, answering Paragraph VII of the petition, admits that on March 5, 1928, the commission made and filed its report and order entitled Midcontinent Oil Rates, 1925, second supplemental report, as alleged and described in said Paragraph VII, but United States denies that the allegations of said paragraph contain a full, complete, and accurate statement of the commission's findings and conclusions made and contained in said report, and for a full, complete, and accurate statement of said findings and conclusions and the facts stated in said report, United States respectfully refers the court to said Exhibit B to the petition.

V

United States admits that on March 4, 1928, petitioners filed with the commission a petition requesting that the commission postpone the effective date of its said order of March 5, 1928; admits further

that said petition contained the statements, matters, and things set forth and alleged in said Paragraph VIII; and further admits that said petition was denied by the commission on February 11, 1929.

302

VI

For answer to Paragraph IX of the petition, United States admits that the commission held and conducted the proceeding described in the said paragraph and, after hearing and investigation, made and filed the report and order therein mentioned, a copy of which is annexed to and made a part of the petition as Exhibit C, but United States denies that said paragraph contains a full, complete, and accurate statement of the commission's findings and conclusions or of the facts set forth and discussed in said report, and for a full, complete, and accurate statement thereof, United States respectfully refers the court to said Exhibit C to the petition.

VII

For answer to Paragraphs X, XI, XII, and XIII of the petition, United States admits that the complaints described in said paragraphs, respectively, were filed with the commission on the dates alleged, and admits the fact alleged in said Paragraph XI that by order entered June 10, 1929, the commission reopened the record before it in the aforementioned proceedings entitled No. 17304. For a full, complete, and accurate statement of the allegations contained in said complaints, United States respectfully refers the court to the commission's report in said proceeding No. 17304, a copy of which is annexed to and made a part of the petition as Exhibit E.

VIII

United States admits the allegations made and contained in said Paragraph XIV of the petition.

IX

United States, for answer to Paragraph XV of the petition, admits that on or about January 3, 1930, petitioners filed with the commission their joint petition requesting the commission to consolidate said proceedings in Nos. 17304, 22714, and 22733 for hearing and decision upon a common record, and to postpone the hearing in said Docket No. 17304 set for January 14, 1930, at Fargo, North Dakota;

303 and United States admits that said petition so filed with the commission contained the statements, matters, and things alleged in said Paragraph XV; and United States further admits that petitioners on January 14, 1930, filed with the commission their petition requesting the commission to reopen said proceedings in No. 15584 and cases consolidated therewith, and hold further hear-

II

United States, for answer to Paragraph V of the petition, admits that on July 15, 1925, there was filed with said commission a complaint entitled and docketed as No. 17304, International Oil Company et al. v. Abilene & Southern Railway Company et al., and further admits that the allegations, things, and conclusions alleged in said paragraph with respect to the statements and allegations made and contained in said complaint are substantially true.

301

III

Answering Paragraph VI of the complaint, United States admits that said commission on May 10, 1926, made and filed its report in a proceeding entitled No. 15584, Midcontinent Oil Rates, 1925, a copy of which report is annexed to and made a part of the petition as Exhibit A, which said report embraced and included certain other proceedings described on the first page of the report in said Exhibit A, which several proceedings had been consolidated for decision upon one record, and the complaints in which together brought into issue the lawfulness under sections 1, 2, and 3 of the interstate commerce act of rates on petroleum products between the points described in said Paragraph VI. But United States denies that the remaining allegations of said Paragraph VI contain a full, accurate, or complete statement of the commission's findings and conclusions and statements made and contained in said report, and for a full, complete, and accurate statement of the findings and conclusions stated by the commission in said report and the facts on which said findings and conclusions were made. United States respectfully refers the court to said Exhibit A to the petition.

IV

United States, answering Paragraph VII of the petition, admits that on March 5, 1928, the commission made and filed its report and order entitled Midcontinent Oil Rates, 1925, second supplemental report, as alleged and described in said Paragraph VII, but United States denies that the allegations of said paragraph contain a full, complete, and accurate statement of the commission's findings and conclusions made and contained in said report, and for a full, complete, and accurate statement of said findings and conclusions and the facts stated in said report, United States respectfully refers the court to said Exhibit B to the petition.

V

United States admits that on March 4, 1928, petitioners filed with the commission a petition requesting that the commission postpone the effective date of its said order of March 5, 1928; admits further

that said petition contained the statements, matters, and things set forth and alleged in said Paragraph VIII; and further admits that said petition was denied by the commission on February 11, 1929.

302

VI

For answer to Paragraph IX of the petition, United States admits that the commission held and conducted the proceeding described in the said paragraph and, after hearing and investigation, made and filed the report and order therein mentioned, a copy of which is annexed to and made a part of the petition as Exhibit C, but United States denies that said paragraph contains a full, complete, and accurate statement of the commission's findings and conclusions or of the facts set forth and discussed in said report, and for a full, complete, and accurate statement thereof, United States respectfully refers the court to said Exhibit C to the petition.

VII

For answer to Paragraphs X, XI, XII, and XIII of the petition, United States admits that the complaints described in said paragraphs, respectively, were filed with the commission on the dates alleged, and admits the fact alleged in said Paragraph XI that by order entered June 10, 1929, the commission reopened the record before it in the aforementioned proceedings entitled No. 17304. For a full, complete, and accurate statement of the allegations contained in said complaints, United States respectfully refers the court to the commission's report in said proceeding No. 17304, a copy of which is annexed to and made a part of the petition as Exhibit E.

VIII

United States admits the allegations made and contained in said Paragraph XIV of the petition.

IX

United States, for answer to Paragraph XV of the petition, admits that on or about January 3, 1930, petitioners filed with the commission their joint petition requesting the commission to consolidate said proceedings in Nos. 17304, 22714, and 22733 for hearing and decision upon a common record, and to postpone the hearing in said Docket No. 17304 set for January 14, 1930, at Fargo, North Dakota;

303 and United States admits that said petition so filed with the commission contained the statements, matters, and things alleged in said Paragraph XV; and United States further admits that petitioners on January 14, 1930, filed with the commission their petition requesting the commission to reopen said proceedings in No. 15584 and cases consolidated therewith, and hold further hear-

ings therein with respect to rates on petroleum products from and to the points mentioned in said Paragraph XV, and requesting the commission for the consolidation therewith Nos. 22714 and 22733 and all other complaints then pending before the commission involving rates on petroleum products from the destinations therein mentioned; and United States further admits that said petition contained the other allegations set forth and described in said Paragraph XV; and United States admits further that said petitions were denied by the commission on April 14, 1930.

X

United States admits that on December 1, 1931, the commission made and filed its report in the proceeding entitled and described in Paragraph XVI of the petition, and admits that a true copy of said report and order is annexed to and made a part of the petition as Exhibit E. For full, complete, and accurate statement of the commission's findings and conclusions made and contained in said report, United States respectfully refers the court to said Exhibit E.

XI

Answering Paragraphs XVII and XVIII of the petition, United States denies that in making and issuing its said order of December 1, 1931, the commission proceeded upon a misconstruction or misinterpretation of its powers and duties under the interstate commerce act; denies that the commission exceeded its powers; and denies that the commission acted arbitrarily, unreasonably, or otherwise in contravention of or beyond its powers; and denies that said order is void for the reasons set forth in said paragraphs or for any other reason.

XII

United States denies the allegations made and contained in Paragraph XIX of the petition.

304

XIII

Answering paragraph XX of the petition, United States denies that said paragraph contains a fair, complete or accurate statement of the issues before the Commission in the proceeding therein mentioned, or of the findings and conclusions contained in the Commission's said report of December 1, or of the facts upon which said findings and conclusions were made; and for a full, complete and accurate statement of said matters, United States respectfully refers the Court to said report and order annexed to and made a part of the petition as Exhibit E. Further answering said paragraph XX, United States expressly denies that in making and rendering said report and Order of December 1, 1931, the Commission gave consid-

eration to any facts or matters outside the record before it in said proceedings, and further denies that the Commission made or rendered and finding or conclusion in said report without substantial evidence of record before it; and United States denies that said order is void or beyond the authority of the Commission.

XIV

Answering paragraph XXI of the petition, United States denies that the record before the Commission in the proceedings mentioned in said paragraph "were stale and were neither representative of the existing nor of the future conditions at the time said report and order of Decemeber 1, 1931, were made." United States admits that on October 16, 1931, the Commission made and rendered its decision and report in the proceeding entitled Fifteen Per Cent, Case, 1931, Exparte No. 103, (officially reported at 178 I. C. C. 539) upon the record of evidence before it in a proceeding wherein the railroads of the United States had sought a 15 percent increase in all freight rates and charges; but United States denies that the Commission's decision in said proceeding constituted a refusal to permit the carriers to make any increase in their said rates and charges, and alleges that by said report and by its "Supplemental Report on Reconsideration" rendered December 5, 1932 (179 I. C. C. 215) in said proceeding the Commission authorized and permitted the carriers to increase their rates and charges on numerous commodities specified in said reports, and that thereby the revenues of the carriers as a whole were very substantially increased, for the reasons set forth and upon the evidence discussed in the Commission's two decisions in said proceedings.

305 United States denies that said Paragraph XXI contains a fair, accurate, or complete statement of the facts stated, or of the findings and conclusions reached by the commission in said reports, and for a full and complete statement thereof United States respectfully refers the court to the official reports and decisions of the commission in said proceeding, 178 I. C. C. 539 and 179 I. C. C. 215.

XV

United States denies that the commission's said order of December 1, 1931, is void because of anything alleged in Paragraph XXII of the petition, or for any other reason; and further denies that in making and issuing said order the commission disregarded the requirements of section 15a of the interstate commerce act, and further denies that in making and rendering its order the commission acted in violation of any duty imposed upon it by law.

XVI

Answering Paragraph XXIII of the petition, United States admits that on February 3, 1932, petitioners filed with the commission a petition requesting postponement of the effective date of said order of December 1, 1931, and for a rehearing, reconsideration,

and reopening of the proceedings in Nos. 17304 and 21737, and United States admits that said petition so filed with the commission contained allegations in substance as alleged in said Paragraph XXIII. United States says that the allegation in said Paragraph XXIII, namely that "each and all of the facts alleged in said petition are true and are material to the issues in said proceedings and have a material bearing upon the exercise of the powers and duties of the commission under the interstate commerce act and especially under section 15a thereof" is incompetent, irrelevant, and immaterial in this proceeding for a judicial review of the commission's said order, for the reason that the matters and things so realleged by virtue of said allegation are exclusively for consideration by the commission in its administrative capacity, and are beyond the jurisdiction of this court to consider in determining whether said order is valid; and for the further reason that it was wholly within the discretion of the commission to determine whether said petition for reopening and reconsideration of said proceedings should be granted or denied; and United States further admits that said petition was denied by the commission on March 7, 1932.

306 XVII

United States denies the allegations made and contained in Paragraphs XXIV and XXV of the petition, and particularly denies that the enforcement of said order of December 1 will result in irreparable injury or in any legal injury to petitioners; denies that the rates prescribed by said order will result in reductions of petitioners' revenues in the amounts alleged in said paragraph, and says that petitioners' said allegation of reduction in revenue is based on speculation and conjecture. United States admits the allegation in said Paragraph XXV that refusal of petitioners to establish and assess the rates prescribed by said order of December 1, 1931, will subject petitioners to the penalties prescribed by the interstate commerce act.

Except as herein expressly admitted United States denies each and every allegation made and contained in the petition.

Wherefore, having fully answered the petition, United States prays that the relief therein prayed be denied and the petition dismissed with costs to the petitioners, and that it have the benefit of such other and further orders, decrees, or relief as may be just and proper.

LEWIS L. DRILL,
United States Attorney.
JOHN LORD O'BRIAN,
The Assistant to the Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.

[*Duly sworn to by Elmer B. Collins; jurat omitted in printing.*]
[File endorsement omitted.]

307 In United States District Court
[Title omitted.]

Petition for leave to intervene

Filed April 18, 1932

Comes now the Northwest Petroleum Association, a corporation organized under the laws of the State of Minnesota with its principal place of business in Minneapolis, Minnesota, an association of independent oil jobbers located in the western part of Minnesota and throughout the State of North Dakota, whose members are the complainants before the Interstate Commerce Commission in International Oil Company, et al, v. Abilene & Southern Railway Company, et al., Docket No. 17304, by its attorneys, Karl Knox Gartner and Elwin E. Hadlick, moves the court that an order be issued permitting said Northwest Petroleum Association to intervene herein as a matter of right under the provisions of section 212 of the Judicial Code (28 U. S. C. A., section 41, page 650) and as grounds therefor respectfully represents that it is a party in interest to the proceedings before the Interstate Commerce Commission from which proceeding the order was issued which the petitioners herein seek to enjoin.

Dated this 18th day of April, 1932.

KARL KNOX GARTNER,
815 Fifteenth Street NW., Washington, D. C.,
ELWIN E. HADLICK,
646 Builders Exchange, Minneapolis, Minnesota,
Attorneys for Petitioner.

308 [Duly sworn to by Helen Lucas: jurat omitted in printing.]
[File endorsement omitted.]

309 In United States District Court

[Title omitted.]

Order permitting Northwest Petroleum Association to intervene

Filed April 18, 1932

The above-styled proceeding coming on to be heard upon the petition of the Northwest Petroleum Association to be allowed to intervene, and the court being fully advised in the premises, it is ordered that the said Northwest Petroleum Association be permitted to intervene herein and become a party hereto.

Done in open court this 18th day of April, 1932.

JOHN B. SANBORN,
Judge, United States Circuit Court,
Acting by assignment.

[File endorsement omitted.]

310 In United States District Court

[Title omitted.]

Petition for leave to intervene

Comes now the Farmers Union Cooperative Oil Company, a corporation, organized under the laws of the State of North Dakota, with its principal place of business at Jamestown, North Dakota; the Farmers Union Cooperative Oil Company, a corporation, organized under the laws of the State of North Dakota, with its principal place of business at Lisbon, North Dakota; the Farmers Union Oil Company, a corporation organized under the laws of the State of North Dakota, with its principal place of business at Bowman, North Dakota; the Farmers Union Oil Company, a corporation, organized under the laws of the State of North Dakota, with its principal place of business at Epping, North Dakota; the Farmers Union Oil Company, a corporation, organized under the laws of the State of North Dakota, with its principal place of business at LaMoure, North Dakota; the Farmers Union Oil Company, a corporation, organized under the laws of the State of North Dakota, with its principal place of business at Langdon, North Dakota; the Farmers Union Oil Company, a corporation, organized under the laws of the State of North Dakota, with its principal place of business at Minot, North Dakota; the Farmers Union Oil Company, a corporation, organized under the laws of the State of North Dakota, with its principal place of business at Plaza, North Dakota; the Farmers Union Oil Company, a corporation organized under the laws of the State of North Dakota, with its principal place of business at Powers Lake, North Dakota; the Farmers Union Oil Company, a corporation, organized under the laws of the State of North Dakota, with
311 its principal place of business at Ryder, North Dakota; the Farmers Union Oil Company, a corporation, organized under the laws of the State of North Dakota, with its principal place of business at Sanish, North Dakota; the Farmers Union Oil Company, a corporation, organized under the laws of the State of North Dakota, with its principal place of business at Tolna, North Dakota; the Farmers Union Oil Company, a corporation, organized under the laws of the State of North Dakota, with its principal place of business at Van Hook, North Dakota; the Farmers Union Oil Company, a corporation, organized under the laws of the State of North Dakota, with its principal place of business at Willow City, North Dakota, all associations of independent oil jobbers, located in the State of North Dakota, whose members are the complaints before the Interstate Commerce Commission in International Oil Company et al. v. A/bilene & Southern Railway Company et al., Docket No. 17304, by its attorneys, Garberg & Johnson, moves the court that an order be issued permitting said corporations above named to inter-

vene as a matter of right under the provisions of section 212 of the Judicial Code (28 U. S. C. A., section 41, page 650), and as grounds therefor respectfully represent that they are parties in interest to the proceedings before the Interstate Commerce Commission from which proceeding the order was issued which the petitioners herein seek to enjoin.

Dated this day of April, 1932.

GARBERG & JOHNSON,
Attorneys for Petitioners, Fargo, North Dakota.

312 In United States District Court

[Title omitted.]

Order permitting intervention

Filed April 18, 1932

The above-styled proceeding coming on to be heard upon the petition of the Farmers Union Cooperative Oil Company, a corportation, of Jamestown, North Dakota et al., to intervene, and the court being fully advised in the premises, it is ordered that the said Farmers Union Cooperative Oil Company, a corporation of Jamestown, North Dakota, and other corporations in the petition named be permitted to intervene herein and become parties hereto.

JOHN B. SANBORN,
Judge, United States Circuit Court,
Acting by assignment.

[File endorsement omitted.]

313 In United States District Court

[Title omitted.]

Application for interlocutory injunction

Filed April 12, 1932

To the Honorable the Judges of the District Court of the United States for the District of Minnesota, Third Division:

Upon the petition filed herein, and upon the annexed affidavits of W. A. Darwitz, F. C. Sharood, W. D. O'Brien, and J. G. Morrison, each duly verified, and upon the proceedings had herein, the petitioners, above named, make application to your honors for an interlocutory injunction suspending and restraining the enforcement, operation, and execution of and setting aside, pending the final judgment of this action, and until the further order of this court, the order of the Interstate Commerce Commission, entered on De-

cember 1, 1931, in proceedings entitled, No. 17304, Interna-
314 tional Oil Company et al. v. Abilene and Southern Railway Company et al., and No. 21737, Dacotah Oil Company et al. v. Atchison, Topeka & Santa Fe Railway Company et al., and enjoining and restraining the defendants, and each of them, and each of their officers, agents, servants and employees, and any and every person acting under and by virtue of the authority of said order from in any way enforcing or attempting to enforce the provisions of said order against petitioners herein, or interfering with the immediate restoration by petitioners of the rates on petroleum products from the midcontinent field to destinations in Minnesota and North Dakota, authorized and prescribed by the report and order of the Interstate Commerce Commission, entered in said proceedings on March 5, 1928; and petitioners pray that your honors call to your assistance to hear and determine this application two other judges, in accordance with the provisions of section 47, title 28, U. S. Code, and to expedite the hearing of this application and to set the same down for hearing at the earliest practical date, and to grant to petitioners such other and further relief as to the court may seem just and proper in the premises.

J. N. DAVIS,
P. F. GAULT,
A. H. LOSSOW,
R. J. HAGMAN,
J. P. PLUNKETT,
M. L. COUNTRYMAN, JR.
Solicitors for Petitioners,
Room 1018, Northern Pacific Ry. Bldg.,
Saint Paul, Minnesota.

D. F. LYONS,
F. G. DORETY,
Of Counsel.

ST. PAUL, MINNESOTA, *April 9, 1932.*

315 In United States District Court

[Title omitted.]

Affidavit of W. A. Darwitz

STATE OF MINNESOTA, }
County of Ramsey, } ss:

W. A. Darwitz, being first duly sworn, deposes and says that he is and since May, 1927, has been commerce assistant of the Northern Pacific Railway Company, and as such commerce assistant has been and is engaged in the preparation of statistical and freight rate data for use in the trial of proceedings before the Interstate Com-

merce Commission and various State commissions involving the freight rates of Northern Pacific Railway Company.

That he prepared numerous exhibits containing data presented to the Interstate Commerce Commission at the hearings before said commission at Fargo, No. Dak., on January 14 and 15, 1930, in
316 the proceeding entitled Docket No. 17304, International Oil Company, et al. *v.* Abilene and Southern Railway Company, et al.; that he has examined the report and order of the Interstate Commerce Commission entered December 1, 1931, in said proceeding, and that he is familiar with the provisions of said report and order and with the rates and rate adjustments therein prescribed, and with the rates and rate adjustments affected by said report and order; that at the request of the general freight agent of Northern Pacific Railway Company affiant prepared an estimate of the effect upon revenues of that company of the rates and rate adjustments prescribed in said report and order if the same should become effective.

That affiant estimated that the effect of the rate reductions and rate readjustments required by said report and order would be to cause a reduction in the annual gross and net revenues of Northern Pacific Railway Company amounting to more than $98,000.00 per annum; that said estimate was reached by affiant in the following manner:

The accounting department of Northern Pacific Railway Company currently compiled and furnished to affiant until July 31, 1931 (at which time such compilation was discontinued), a statement of the monthly movement of petroleum products over the lines of Northern Pacific Railway Company showing the cars and tons of petroleum products from each principal originating State, or smaller district, to the various portions of the lines of Northern Pacific Railway Company. Affiant then applied to the specific movements of traffic disclosed by said statement for the entire year of 1930 from the midcontinent field to North Dakota and Minnesota west of the line of the Great Northern from Duluth to Pipestone the average freight rates applicable to said movements under the rate adjustment in effect prior to March 15, 1932, and the average freight rates required to be published in lieu thereof under the provisions of said report and order of the Interstate Commerce Commission. Affiant
317 then ascertained the difference in revenue between said two bases of rates. The reduction in the revenues of all participating carriers thus disclosed was $211,873.40.

Affiant then ascertained the existing divisional arrangements between Northern Pacific Railway Company and its connecting carriers in respect of the various movements of traffic disclosed by said statement and determined the average percentage of the total revenues accruing to Northern Pacific Railway Company in connection with each specific movement so disclosed, and applied said percentages for the purpose of ascertaining the effect of said rate re-

ductions and readjustments upon the earnings of Northern Pacific Railway Company; that this computation showed a total estimated loss to said Northern Pacific Railway Company, on the basis of the 1930 movement of the traffic, amounting to $97,763.53.

Affiant further states that said statements furnished to him by the accounting department of Northern Pacific Railway Company show that during the year 1930 Northern Pacific Railway Company delivered 6,147 cars of refined petroleum products at stations on its lines in Minnesota and North Dakota, which originated at points in the midcontinent field, whereas it delivered only 5,328 cars at stations on its lines in Minnesota and North Dakota which had origin in the midcontinent field during the year 1929, and that during the first seven months of 1931 the refined petroleum products traffic moving by railroad from points in the midcontinent field to destinations on its lines in Minnesota and North Dakota was greater than the corresponding movement during the first seven months of the year 1930, the deliveries during the first seven months of 1930 being 3,523 cars and the deliveries during the first seven months of
318 1931 being 3,800 cars; that affiant is advised and believes that the petroleum products traffic moving by railroad from points in the midcontinent field to destinations in western Minnesota and North Dakota is increasing, and that the movement during 1932 will exceed the movement during 1930, and that in his opinion and to the best of his knowledge and information the results obtained by him, based upon said analysis of the 1930 movement of the traffic understate the actual losses in revenue which will be sustained by Northern Pacific Railway Company from the application of the rates on petroleum and petroleum products required by the Interstate Commerce Commission in its said report and order.

W. A. DARWITZ.

Subscribed and sworn to before me this 9th day of April, 1932.

G. T. C. PETERSON, [SEAL.]
Notary Public, Ramsey County, Minnesota.

My commission expires October 21, 1935.

319 In United States District Court

[Title omitted.]

Affidavit of F. C. Sharood

F. C. Sharood, being first duly sworn, deposes and says that he is and since 1920 has been assistant general auditor of Northern Pacific Railway Company, and that since 1928, as such assistant general auditor, he has been in charge of the preparation of statistics and statistical analyses of the accounting records of said railway company.

That he has recently made an analysis of the revenues of Northern Pacific Railway Company for the years 1924 to 1931, inclusive, for

the purpose of ascertaining the classes of traffic responsible for the decline in gross and net revenues of said railway company and for the purpose of estimating its future earnings prospect; that
320 in making such analysis he determined the average annual revenues produced by each class of freight traffic during the years 1924 to 1928, both inclusive, and compared said average annual revenues with the corresponding revenues from said classes of freight traffic actually received by Northern Pacific Railway Company during each of the years 1929, 1930, and 1931; that the annual gross revenues from the major descriptions of freight traffic during the average year of the said five-year period and during the years 1929, 1930, and 1931 were as follows:

	1924–1928 annual average	1929	1930	1931
Products of agriculture	$20,487,847	$18,074,037	$18,039,281	$14,705,383
Animals and animal products	3,871,826	4,109,629	3,815,701	4,092,190
Products of mines	8,567,149	9,093,390	7,848,638	6,019,880
Products of forests	18,745,946	17,718,528	12,400,298	7,891,750
Manufactures and miscellaneous	16,677,353	19,753,453	16,596,122	13,172,114
Less than carload freight	8,277,448	8,113,105	6,435,230	4,941,710
Total freight revenues	76,627,569	76,862,142	65,135,270	50,823,027

Affiant further says that he found from said analysis that during each of the years 1929, 1930, and 1931 the petroleum products traffic on said Northern Pacific Railway produced substantially greater revenue than it produced on the average during the five-year period 1924 to 1928, inclusive; that during said five-year period petroleum products revenues represented 4.74 per cent of the total freight revenues of Northern Pacific Railway Company; that during the year 1929 said traffic represented 5.82 per cent of its total freight revenues; that during the year 1930 said traffic represented 6.96 per cent of its total freight revenues, and that during the year 1931 said traffic represented 8.32 per cent of its total freight revenues.

Affiant further says that for the purpose of ascertaining the effect upon the revenues of Northern Pacific Railway Company of the reduced rates established on March 15, 1932, from the midcontinent field to destinations in North Dakota and Minnesota west of the line of Great Northern Railway Company from Duluth to Pipestone, Minnesota, an analysis of each waybill covering shipments
321 moving on said rates over Northern Pacific Railway lines during the period March 15, 1932, to March 31, 1932, was made by the accounting department of said company under affiant's direction and supervision; that he has tabulated the results of said analysis on the statement hereto attached, marked "Exhibit A," and made a part of this affidavit, and that the figures shown on said Exhibit A are true and correct to the best of his knowledge and belief; that as will more fully appear from said Exhibit A the establishment of said reduced rates on March 15, 1932, resulted and

is resulting in reductions in the revenues of Northern Pacific Railway Company at the rate of approximately $373.00 per day on the average, or $136,000.00 per annum.

F. C. SHAROOD.

Subscribed and sworn to before me this 9th day of April, 1932.

G. T. C. PETERSON, [SEAL.]
Notary Public, Ramsey County, Minnesota.

My commission expires October 21, 1935.

Exhibit A

Special—1528

Northern Pacific Railway Company

Petroleum products from mid-continent fields to Minnesota and North Dakota, March 15th to 31st, 1932

TO MINNESOTA

Date	Through charges			Northern Pacific proportion		
	Old rates	New rates	Decrease	Old rates	New rates	Decrease
March:						
15	$3,864.74	$3,406.83	$457.91	$1,326.40	$1,170.50	$155.90
16	3,626.13	3,188.36	437.77	1,258.35	1,106.65	151.70
17	2,044.60	1,824.64	219.96	762.01	679.87	82.14
18	3,076.67	2,634.68	441.99	1,057.67	902.51	155.16
19	1,619.91	1,378.51	241.40	515.15	438.67	76.48
20	433.94	388.78	45.16	139.33	125.29	14.04
21	1,614.14	1,427.85	186.29	585.20	517.78	67.42
22	2,603.50	2,271.76	331.74	848.03	742.90	105.13
23	687.35	595.38	91.97	276.80	241.02	35.78
24	2,564.03	2,236.20	327.83	873.56	762.08	111.48
25	3,491.33	3,101.19	390.14	1,193.87	1,061.40	132.47
26	2,589.13	2,289.04	300.09	895.05	790.68	104.37
28	1,736.24	1,503.18	233.06	636.06	552.05	84.01
29	1,653.05	1,439.28	213.77	561.05	487.14	73.91
30	1,260.45	1,081.06	179.39	424.38	364.14	60.24
31	776.42	655.93	120.49	246.12	207.92	38.20
Total	33,641.63	29,422.67	4,218.96	11,599.03	10,150.60	1,448.43

TO NORTH DAKOTA

March:						
15	$7,691.68	$6,560.88	$1,130.80	$4,089.64	$3,487.91	$601.73
16	6,502.50	5,610.07	892.43	3,585.49	3,095.58	489.91
17	4,089.58	3,516.06	573.52	2,163.77	1,857.45	306.32
18	6,308.55	5,406.11	902.44	3,340.77	2,825.61	515.16
19	3,229.54	2,804.55	424.99	1,753.27	1,517.57	235.70
21	5,214.11	4,534.79	779.32	2,707.68	2,345.54	362.14
22	4,549.99	3,903.00	646.99	2,375.24	2,030.88	344.36
23	3,702.32	3,212.90	489.42	2,095.91	1,823.73	272.18
24	6,373.53	5,472.59	900.74	3,348.49	2,868.23	480.26
25	5,763.85	5,071.38	692.47	2,987.23	2,623.91	363.32
26	1,819.89	1,549.41	270.48	899.35	764.44	134.91
27	458.56	405.22	53.34	282.01	249.21	32.80
28	3,143.42	2,832.85	310.57	1,571.89	1,422.12	149.77
29	2,021.44	1,780.80	240.64	932.98	818.56	114.42
30	1,954.30	1,697.20	257.10	972.35	844.41	127.94
31						
Total	62,823.06	54,357.81	8,465.25	33,106.07	28,575.15	4,530.92
Grand total	96,464.69	83,780.48	12,684.21	44,705.10	38,725.75	5,979.35

NOTE.—(1) Does not include emergency charge 1¢ per cwt.
(2) Includes cars reported at destination to date. There may be some cars in transit of which we have no knowledge at the present time.

St. PAUL, MINNESOTA, *April 8th, 1932.*
AFR—S—3241.

323 In United States District Court

[Title omitted.]

Affidavit of W. D. O'Brien

STATE OF MINNESOTA,
County of Ramsey, ss:

W. D. O'Brien, being first duly sworn, deposes and says: That he is at present, and has been since July 1, 1928, assistant general freight agent of the Great Northern Railway Company, hereinafter referred to as "Great Northern," and is now, and since July 1, 1928, has been engaged in the analysis, promulgation, and publication of freight rates on behalf of that railroad and of other railroads and has been in charge of the proceedings involving the freight rates of that railroad before the Interstate Commerce Commission and various State commissions.

That he attended the second hearing before the Interstate Commerce Commission in the proceeding entitled International Oil Company, et al. v. Abilene & Southern Railway Company, et al., Docket 17304, and prepared and submitted exhibits and oral evidence therein. That he has examined the report and order of the Interstate Commerce Commission in said proceeding entered March 5, 1928, and the supplemental report and order of the Inter-
324 state Commerce Commission therein, entered December 1, 1931, and that he is familiar with the provisions of said reports and orders and with the rates and rate adjustments therein prescribed.

That at the request and under the direction of affiant the members of the freight traffic department of the Great Northern have prepared an estimate of the effect upon the revenues of that carrier of the rates and rate adjustments prescribed in said reports and orders if said rates and rate adjustments should become effective.

That according to the said estimate the effect of such rates and rate adjustments upon the Great Northern will be to cause a reduction in revenue of that carrier amounting to approximately $130,305.16 per annum.

That the foregoing estimate of the reduction in revenue of the Great Northern has been reached as a result of a study conducted at the request and under the direction of affiant by the said members of the freight traffic department of the Great Northern in the following manner:

First, the accounting department of the Great Northern made a study of the petroleum movement into western Minnesota and North Dakota for the months of July, August, and September, 1929. This study showed the following movement:

To—	From Midcontinent				Total
	Group 1	Group 2	Group 3	Group 4	
North Dakota	54 cars	17 cars	668 cars	120 cars	859 cars
Western Minnesota	65 cars	27 cars	538 cars	158 cars	788 cars
Total	119 cars	44 cars	1,206 cars	278 cars	1,647 cars

It was then determined to what points each of the above cars moved and, with respect to each car, the number of cents per hundred pounds by which the rates in effect at the present time exceeded those which would be required to be published in pursuance of the reports and orders of the commission as aforesaid. This difference in rate was then multiplied by the number of cars and the
325 total of these results added together and multiplied by 562, the average loading in hundred weight of petroleum on the Great Northern for the year 1929. This shows a total estimated loss to all carriers participating in the movement to destinations on the Great Northern under the rates prescribed in the said reports and orders of the Interstate Commerce Commission of $64,635.62 for the three months shown, or a loss of $258,542.48 annually.

That of this total annual loss, the proportion borne by the Great Northern would be approximately 50.4% or $130,305.16. This estimate is based upon an approximate average of the divisions accruing to the Great Northern under the through rates on petroleum traffic from the midcontinent field to the destinations here considered.

Affiant further states that he has examined the studies so prepared by the accounting department and the freight traffic department of the Great Northern and states that the method used as above described in determining the estimated annual loss of revenue is a proper and reasonably accurate method and that in his opinion and to the best of his knowledge and information, the estimates above shown closely approximate the losses in revenue to the Great Northern which would accrue from the application of the rates on petroleum and petroleum products described in said reports and orders of the Interstate Commerce Commission.

W. D. O'Brien.

Subscribed and sworn to before me this 8th day of April, 1932.

Alpha M. Conlin,
Notary Public, Ramsey County, Minn.

My commission expires July 9, 1935.

[seal.]

326 In United States District Court

[Title omitted.]

Affidavit of J. G. Morrison

STATE OF MINNESOTA,
County of Ramsey, ss:

J. G. Morrison, being first duly sworn, deposes and says that he is at present and since December 1, 1925, has been general freight agent for the Northern Pacific Railway Company, and prior thereto and for more than thirty years has been engaged in freight traffic work for Northern Pacific Railway Company and other railroad companies; that as such general freight agent he has been and is required to make, revise, and adjust the freight rates and charges of said Northern Pacific Railway Company, and to defend and justify such freight rates and charges when attacked in proceedings before the Interstate Commerce Commission and various State commissions, and that he has personal knowledge of the matters hereinafter stated.

327 That shipments of gasoline and other refined petroleum products in tank carloads, destined to stations on the line of Northern Pacific Railway Company in Minnesota and North Dakota, originate at numerous points of origin in addition to points in the midcontinent field in the States of Kansas, Missouri, Oklahoma, Louisiana, Arkansas, and Texas; that a large number of such shipments originate at points in the State of Wyoming and are received by Northern Pacific Railway Company from connecting lines either at Laurel, Montana, Oakes, No. Dak., St. Cloud, Minnesota, or at the Twin Cities terminals; that during the first seven months of the year 1931 the Northern Pacific delivered approximately 2,200 cars of petroleum products at stations on its lines in North Dakota and northwestern Minnesota that originated in Wyoming; that there is and for many years has been a tank farm situated on the rails of Northern Pacific Railway Company at Superior, Wis., from which a substantial number of shipments of refined petroleum products are made via the Northern Pacific and other railroads to destinations in Minnesota; that during the first seven months of the year 1931 approximately 300 cars of gasoline and other petroleum products were shipped via the Northern Pacific from Superior, Wis., to destinations in Minnesota west of the line of Great Northern Railway Company extending from Duluth to Pipestone; that during the month of May, 1931, a pipe line for the transportation of gasoline was completed and placed in operation from points in the midcontinent field to Minnesota Transfer, Minnesota, where a tank farm was established at said pipeline head; that since the establishment of said gasoline pipe line a substantial number of shipments of gasoline, in tank carloads, have been made from said pipe-line head over the lines of Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Mil-

waukee, St. Paul and Pacific Railroad Company, and Minneapolis, St. Paul and Sault Ste. Marie Railway Company to destinations in Minnesota and North Dakota.

328 That said railway companies maintain, charge, and collect on shipments of gasoline and petroleum products originating at said tank farms their separately established local rates applicable to the transportation of gasoline and refined petroleum oils from Superior, Wis., and from Minnesota Transfer, Minnesota, respectively, to destinations on their lines in Minnesota and North Dakota; that prior to March 15, 1932, said petroleum traffic moved freely on said local rates, and that, in the opinion of affiant, said local rates were and are just and reasonable rates for the services to which they apply.

That effective March 15, 1932, said railway companies and their connections were required to establish and did establish substantially reduced rates on gasoline and other refined petroleum products from the midcontinent field to destinations in North Dakota and Minnesota west of the line of Great Northern Railway Company from Duluth, Minnesota, to Pipestone, Minnesota, in compliance with the order of the Interstate Commerce Commission of December 1, 1931, in its Docket No. 17304, International Oil Company, et al. v. Abilene and Southern Railway Company, et al.; that since the establishment of said reduced rates each of said railway companies has received repeated and persistent demands from the operators of said tank farms at Superior, Wis., and at Minnesota Transfer, Minnesota, for reductions in the local rates of said railway companies on gasoline and refined petroleum products in tank carloads from Superior, Wis., and Minnesota Transfer, Minnesota, to destinations on their lines in Minnesota and North Dakota, in order to bring said local rates into fair relationship to said reduced rates from the midcontinent field; that in the opinion of affiant said local rates are too high in relation to said reduced rates from the midcontinent field to permit of the unrestricted movement of traffic from Superior and from Minnesota Transfer, and said reduced rates from the midcontinent field

329 are and will be unduly prejudicial to the operators of said tank farms; that unless said railway companies are permitted to restore the rates from the midcontinent fields which were in effect prior to March 15, 1932, they will be compelled to proceed promptly to make substantial reductions in their local rates from Superior, Wis., and Minnesota Transfer, Minnesota, in order to remove said undue prejudices; that, in the opinion of affiant, said reductions in local rates will not increase the aggregate traffic of said railway companies and will substantially reduce their revenues and earnings; that it is affiant's belief as a result of his past experience, that if said local rates are reduced voluntarily by said railway companies in order to remove said undue prejudices, it will be impossible without unreasonable delay to increase them to a proper level even if said rates from the midcontinent field should be increased.

Affiant further says that the freight rates on gasoline and other refined petroleum products, in tank carloads, from points of origin in the State of Wyoming to destinations in North Dakota and western Minnesota, and the relationship of said rates to the rates on the same commodities, in tank carloads, from points of origin in the midcontinent field to the same destinations in North Dakota and western Minnesota, are now under investigation by the Interstate Commerce Commission in its Dockets Nos. 22733, Public Service Commission of Wyoming v. Chicago and Northwestern Railway Company, et al., and 22714, Standard Oil Company (Indiana) v. Chicago and Northwestern Railway Company, et al.; that a hearing in said proceedings was had before an examiner of the Interstate Commerce Commission at Chicago, Illinois, beginning on April 23, 1930, and concluding on May 1, 1930; that thereafter briefs were filed by the parties, a proposed report issued by an examiner of the commission, exceptions to said proposed report filed by the parties, and on October
330 21, 1931 said proceedings were orally argued before a division of the commission at Washington, D. C., and submitted to the commission for decision; that no decision or report has been made by the Interstate Commerce Commission in said proceedings to the best of affiant's knowledge, information and belief.

J. G. MORRISON.

Subscribed and sworn to before me this 9th day of April, 1932.

G. T. C. PETERSON,
Notary Public, Ramsey County, Minnesota.

My commission expires October 21, 1935. [SEAL.]

[File endorsement omitted.]

331 In United States District Court

[Title omitted.]

Order convoking three-judge court

Filed April 12, 1932

Pursuant to section 47, title 28, U. S. Code, an application for an interlocutory injunction having been presented to me by the petitioners in the above-entitled cause, and it appearing that the petition filed in said cause is brought to enjoin the enforcement of an order made by the Interstate Commerce Commission, upon the grounds that said order is beyond the lawful authority of the commission and wholly void, I hereby call to my assistance for the hearing of said application and cause the Honorable Wilbur F. Booth, a judge of

the Circuit Court of Appeals of this Eighth Circuit, and the Honorable John B. Sanborn, a judge of the Circuit Court of Appeals of said Eighth Circuit.

It is further ordered that said application be and it is hereby set for hearing in the Federal courtroom in the Federal Building in St. Paul, Minnesota, on Monday, the 18th day of April, 1932, at ten o'clock in the forenoon of said day, and that five days' notice of said hearing be given to the Interstate Commerce Commission and the Attorney General of the United States as required by law.

GUNNAR H. NORDBYE,
United States District Judge.

ST. PAUL, MINNESOTA, *April 9, 1932.*

[File endorsement omitted.]

332 In United States District Court

[Title omitted.]

Notice of hearing

Filed April 18, 1932

To the Interstate Commerce Commission and to the Honorable William B. Mitchell, Attorney General of the United States:

You, and each of you, are hereby given notice, pursuant to the provisions of section 47, title 28, U. S. C., that the District Court of the United States for the District of Minnesota, Third Division, has set for hearing and determination, in the United States District court room in the Federal Building, in the city of St. Paul, State of Minnesota, on the 18th day of April, 1932, at ten o'clock in the forenoon of said day, the application of petitioners for an interlocutory injunction in the above-entitled cause, which is brought to enjoin the enforcement of the order of the Interstate Commerce Commission, entered on December 1, 1931, in proceedings entitled, No. 17304, International Oil Company et al. v. Abilene and Southern Railway Company et al., and No. 21737, Dacotah Oil Company et al. v. Atchi-
son, Topeka and Santa Fe Ry. Co. et al., upon the ground
333 that said order is beyond the lawful authority of the commission and wholly void.

There is served upon each of you herewith a copy of the application for said interlocutory injunction, and a copy of the order of the District Court of the United States for the District of Minnesota,

dated April 9th, 1932, convoking a three-judge court for the hearing of said application, as provided for by said section 47, title 28, U. S. Code.

J. N. DAVIS,
P. F. GAULT,
A. H. LOSSOW,
R. J. HAGMAN,
J. P. PLUNKETT,
M. L. COUNTRYMAN, Jr.,
Solicitors for Petitioners,
Room 1018, Northern Pacific Ry. Bldg.,
Saint Paul, Minnesota.

D. F. LYONS,
F. G. DORETY,
Of Counsel.

Dated at St. Paul, Minn., April 9th, 1932.
[File endorsement omitted.]

334 In United States District Court

[Title omitted.]

Affidavit of Neal E. Williams

Filed April 18, 1932

STATE OF MINNESOTA,
County of Ramsey, ss:

Neal E. Williams, being first duly sworn, deposes and says that he is the traffic commissioner for the Chamber of Commerce of the City of Fargo, in the State of North Dakota.

That he is familiar with conditions in the eastern portion of the State of North Dakota and in the western portion of the State of Minnesota, and that he knows of his own knowledge that the citizens of the area mentioned were benefited by the decrease in the petroleum freight rates which became effective on the 15th day of March, 1932; that any loss complained of by the carriers accrued to the benefit of the citizens of such community; that affiant knows of his own knowledge that in the State of North Dakota and in the western portion of Minnesota a great deal of the farming activities are carried on by the use of power machinery requiring the use of petroleum products, and that the rate on petroleum products becoming effective on the 15th of March was of great benefit to the farming communities in the area affected.

335 Affiant further states that the economic conditions in North Dakota and western Minnesota are not good and that it will be a hardship for the agricultural people to pay the increased freight rates which will be occasioned by the granting of the prayer

for an injunction in this matter, and that by reason of present economic conditions these communities can ill afford to be deprived of the benefits of the reduced rates which have been prescribed as reasonable maximum rates by the Interstate Commerce Commission. If the interlocutory injunction prayed for by the petitioners herein is granted it will work an irreparable injury to the citizens of the communities served by the petitioners.

N. E. WILLIAMS.

Subscribed and sworn to before me this 18th day of April, 1932.

ADELE L. GUERIN,
Notary Public, Ramsey County, Minn.

My commission expires Oct. 26, 1938.

[SEAL.]

[File endorsement omitted.]

336 In United States District Court

[Title omitted.]

Affidavit of N. E. Williams

Filed April 18, 1932

STATE OF MINNESOTA,
County of Ramsey, ss:

N. E. Williams, being first duly sworn, deposes and says:

That the attached exhibit was offered as an exhibit and received in evidence by the Interstate Commerce Commission by Witness Brown, representing the Standard Oil Company, in Docket #22733, Public Service Commission of Wyoming versus Chicago Northwestern Railroad, et al, and #22714, Standard Oil Company (Indiana) versus Chicago Northwestern Railroad Company, et al.

N. E. Williams.

Subscribed and sworn to before me this 18th day of April, 1932.

ROBERT V. RENSCH,
Notary Public, Ramsey County, Minnesota.

My commission expires Oct. 31, 1934.

[NOTARIAL SEAL.]

337 Exhibit

	1929	1928	1927	1926	1925	1924	1923	1922	1921
Chicago and North Western Ry. Co.									
Common stock—									
Amt. of dividend	$7,129,735	$7,129,705	$6,333,228	$6,243,250	$5,806,100	$5,806,100	$5,806,100	$7,257,625	$7,257,625
Per cent of dividend	4½%	4½%	4%	4%	4%	4%	4%	5%	5%
Preferred stock—									
Amt. of dividend	$1,567,650	$1,567,650	$1,567,650	$1,567,650	$1,567,650	$1,567,650	$1,567,650	$1,567,650	$1,567,650
Per cent of dividend	7%	7%	7%	7%	7%	7%	7%	7%	7%
Income balance carried to profit and loss	$6,901,671	$3,361,23	$2,025,185	$4,608,941	$3,410,828	$297,574	$1,303,718	$72,261	Dr. $10,070,708
Total corporate surplus	80,188,185	74,164,216	68,559,170	69,153,639	64,531,151	60,968,726	60,016,577	60,706,147	60,681,886
Nonoperating income	4,036,490	3,294,360	3,738,609	3,562,362	3,110,442	4,173,962	5,341,492	3,970,006	4,493,264
Chicago, Burlington and Quincy R. R. Co.:									
Common stock—									
Amt. of dividend	$17,083,850	$17,083,820	$17,083,815	$17,083,800	$17,083,785	$17,083,765	$17,083,735	$17,083,700	*$104,925,917
Per cent of dividend	10%	10%	10%	10%	10%	10%	10%	10%	27%
Income balance carried to profit and loss	$12,492,688	$9,194,432	$4,359,303	$6,806,134	$3,807,308	$4,522,133	$1,917,285	$2,883,537	$6,014,948
Total corporate surplus	226,142,693	211,747,612	200,076,843	197,806,524	192,841,223	189,115,522	184,591,857	191,436,316	177,297,297
Nonoperating income	4,910,956	4,208,592	4,032,882	4,249,111	3,367,050	3,286,469	3,670,841	4,447,400	4,009,424
Chicago, Milwaukee, St. Paul and Pacific R. R. Co.:									
Preferred stock 5% noncum.—									
Amt. of dividends									
Per cent of dividends									
Income balance carried to profit and loss	$7,092,023	$8,699,702	Dr. 6,365,929	Dr. 2,447,076	Dr. 3,934,611	Dr. 1,868,606	$207,686	Dr. 6,143,168	Dr. 11,070,609
		Dr. 791,713							
Total corporate surplus	14,910,544	8,495,953	604,722	7,662,837	11,756,049	16,693,871	21,400,285	23,562,241	29,150,681
Nonoperating income	4,791,727	3,421,829	1,982,983	1,738,034	1,903,384	2,525,986	2,372,560	2,218,095	4,371,858
Great Northern Railway Co.:									
Preferred stock 6% noncum.—									
Amt. of dividends	$12,450,225	$12,449,205	$12,447,355	$12,445,855	$12,369,145	$12,473,618	$12,473,605	$13,097,264	$17,462,974
Per cent of dividends	5%	5%	5%	5%	5%	5%	5%	5¼%	7%
Income balance carried to profit and loss	▶13,203,619	$12,703,574	$10,523,324	$13,491,891	$9,059,990	$5,459,698	$355,498	Dr. 2,252,112	$10,982,668
Total corporate surplus	165,685,738	162,499,526	154,389,752	154,439,241	140,564,902	132,134,125	126,347,164	126,437,101	129,371,798
Nonoperating income	13,483,566	14,597,533	14,394,871	14,638,639	12,911,607	13,089,227	7,133,108	13,519,446	33,506,236
The Minneapolis & St. Louis R. R. Co.:									
Common stock—									
Amt. of dividends									
Per cent of dividends									
Income balance carried to profit and loss	Dr. 948,091	Dr. 1,720,408	Dr. 2,064,193	Dr. 2,017,136	Dr. 1,905,210	Dr. 2,996,391	Dr. 1,212,105	Dr. 1,161,924	Dr. 1,836,223
Total corporate surplus	Dr. 14,078,996	Dr. 13,056,646	Dr. 11,296,852	Dr. 9,229,144	Dr. 7,044,153	Dr. 4,810,082	Dr. 1,807,794	Dr. 512,176	698,277
Nonoperating income	292,859	265,256	285,881	327,024	296,625	434,124	457,018	386,674	628,186
Minneapolis, St. Paul & Sault Ste. Marie Ry. Co.:									
Common stock—									
Amt. of dividends							$1,008,272	$1,008,272	$4,764,476
Per cent of dividends							4%	4%	7%

* Includes stock dividend of 54.13252182 per share on 1,108,391 shares of capital stock.

337 Exhibit—Continued

	1929	1928	1927	1926	1925	1924	1923	1922	1921
Minneapolis, St. Paul & Sault Ste. Marie Ry. Co.—Continued.									
Preferred stock 7% noncum.—									
Amount of dividends							$504,136	$504,136	$882,238
Per cent of dividends							4%	4%	7%
Income balance carried to profit and loss	$2,042,025	$2,919,988	$2,020,202	$121,354	$1,765,111	$844,442	$950,663	$499,046	3,472,158
Total corporate surplus	22,393,052	20,750,710	17,908,635	17,461,389	17,632,979	16,131,138	15,503,794	16,087,114	16,119,889
Nonoperating income	1,167,317	975,497	842,899	784,687	818,366	703,250	572,489	1,208,111	1,362,020
Northern Pacific Railway Company:									
Common stock—									
Amt. of dividends	$12,400,000	$12,400,000	$12,400,000	$12,400,000	$12,400,000	$12,400,000	$12,400,000	$12,400,000	$17,360,000
Per cent of dividends	5%	5%	5%	5%	5%	5%	5%	5%	7%
Income balance carried to profit and loss	$21,808,308	$21,133,210	$18,538,424	$21,002,732	$17,944,288	$3,570,244	$581,426	$2,656,930	$4,705,399
Total corporate surplus	207,703,123	198,789,386	193,050,628	187,852,565	181,257,011	176,805,159	173,308,043	175,954,259	183,130,520
Nonoperating income	21,196,786	16,769,715	16,401,043	17,508,719	15,896,313	16,191,263	16,174,002	16,726,331	30,415,046

[File endorsement omitted.]

338 In United States District Court

[Title omitted.]

STATE OF MINNESOTA,
County of Ramsey, ss:

Affidavit of Ralph Ingerson

Filed April 18, 1932

Before me, a notary public for the above State and county, personally appeared Mr. Ralph Ingerson, who, being first duly sworn, deposeth and saith:

That he is now and has been for the past two years manager of the oil department of the Farmers Union Central Exchange and that in such capacity as manager of the oil department he has occasion to be and is familiar with the marketing activities of oil companies in the State of North Dakota. That he has been, since 1900 up to the present time, the owner of a farm in Burke County, North Dakota, and has operated such farm himself as his main occupation up to April, 1930, and still supervises the operation of such farm in addition to his other duties. That during the period from 1900 until the present time he has had under cultivation varying amounts of ground ranging from 160 acres up to 2,000 acres. That he is fully conversant and familiar with the problems of farming in North Dakota and that he is qualified from experience to state the following facts from his own knowledge and belief.

Said Ralph Ingerson deposeth and says that at least 75% of all the petroleum products used and consumed in the State of North Dakota are used and consumed directly for the purpose of satisfactorily operating farming activities. That of this 75% approximately ¾ is used directly in tractors in the actual process of putting in and harvesting the crops and that the balance is used in the hauling of such crops to a point at which other transportation to market is available. That a large portion of the work on farms is done with tractors and other machinery operated by internal combustion motors using petroleum products in their operation. Further that fully one-half of the total cost of sowing and harvesting crops of the major farm products grown in the State of North Dakota is represented by the cost of the petroleum products used in preparation of the soil and harvesting of the crops.

Said Ralph Ingerson further deposeth and saith that since 1929 and before the average farmer in North Dakota has received as proceeds of his crops far less than the cost of production of such crop. On his own knowledge said deponent saith that farmers in his own county have been receiving so small a portion of the
339 cost of production of their crop that they are unable to pay not only the interest on the mortgages on their farms but even

the taxes on such farms and that at the present time one-half or more of the farms in Burke County, North Dakota, are delinquent in taxes due to the inability of the owners to pay such taxes. That this conditions is true not only in Burke County but in Mountraill County and many others throughout the State. Many farmers in North Dakota were entirely dependent on the Red Cross during the past year for the means to sustain life. The Farmers Union business activities shipped many carloads of food and clothing to destitute farmers in North Dakota this year to supplement the activities of the Red Cross. This was necessary because the returns from farming activities were not sufficient to pay the cost of production of the crop without considering the sustenance of the farmers and their families who gave their labor to sow and harvest this crop.

The cost of petroleum products used in the production of farm products in North Dakota is a material portion of the cost of such products and unless the farmers of North Dakota can secure the cost of the products out of their crops they will be forced to discontinue farming as their capital is now practically exhausted. For the past two years the transportation charges on petroleum products sold within the State of North Dakota have been greater than the cost of the petroleum products themselves. Any reduction in such transportation costs will have a direct benefit in returning to the consumer the cost of such reduction and furthering the possibilities of such producers of agricultural products to secure for his products such returns as to enable them to continue farming activities.

RALPH INGERSON.

Subscribed and sworn to before me, a notary public, this 18th day of April, 1932.

MARGARET A. BIERMAN,
Notary Public, Ramsey Co., Minn.

My Commission expires Jan. 29, 1937.
[NOTARIAL SEAL.]
[File endorsement ommitted.]

340 In United States District Court

[Title omitted.]

Stipulation as to final hearing

April 18, 1932

The above-entitled action came on this day to be heard upon the motion herein for an interloctory injunction, M. L. Countryman, jr., Esq., and A. H. Lossow, Esq., appearing for the petitioners herein; Elmer B. Collins, Esq., special assistant to the Attorney General, appearing for the United States, and Edward M. Reidy, Esq., ap-

pearing for the Interstate Commerce Commission. After hearing the arguments of counsel herein, it is by the court

ORDERED: That the attorney for the Interstate Commerce Commission herein be and he hereby is granted ten days from this date within which to file a brief.

It is stipulated between counsel that this be the final hearing and that the decision of the court shall be based on the matter submitted, and all facts and findings as now submitted.

341 In United States District Court, District of Minnesota, Third Division

In Equity, No. 2444

NORTHERN PACIFIC RAILWAY COMPANY, GREAT NORTHERN RAILWAY Company, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Minneapolis, St. Paul and Sault Ste. Marie Railway Company, and Chicago and Northwestern Railway Company, petitioners,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, defendants

NORTHWEST PETROLEUM ASSOCIATION AND FARMERS UNION COOPERATIVE Oil Company et al., interveners

Decision and order for decree

Filed July 19, 1932

This cause came on for hearing on the 18th day of April, 1932, upon the application of the petitioners for a preliminary injunction. It was stipulated by counsel that the cause should be finally determined upon the record without further testimony, and upon briefs thereafter to be filed.

Mr. M. L. Countryman, jr., and Mr. A. H. Lossow (Mr. J. N. Davis, Mr. P. F. Gault, Mr. R. J. Hagman, Mr. J. P. Plunkett, Mr. D. F. Lyons, and Mr. F. G. Dorety were with them on the brief) for the petitioners;

Mr. Elmer B. Collins, special assistant to the Attorney General (Mr. Lewis L. Drill, United States attorney, and Mr. John Lord O'Brian, assistant to the Attorney General, were with him on the brief) for the United States;

Mr. E. M. Reidy (Mr. Daniel W. Knowlton was with him on the brief) for the Interstate Commerce Commission;

Mr. Karl Knox Gartner and Mr. Elwin E. Hadlick appeared for the intervener, Northwest Petroleum Association, and Messrs. Gar-

berg & Johnson for the interveners, Farmers Union Cooperative Oil Company, et al.

342 The suit, being one to enjoin and annul an order of the Interstate Commerce Commission, was heard before a court of three judges, consisting of John B. Sanborn, United States circuit judge, William A. Cant, United States district judge, and Gunnar H. Nordbye, United States district judge.

The petitioners are common carriers in interstate commerce whose lines are situated in what is termed "western trunk line territory," which comprises the States of Illinois, Iowa, Nebraska, Wisconsin, Minnesota, North Dakota, and South Dakota. The States of Missouri, Kansas, Oklahoma, and Texas and portions of Louisiana and Arkansas form what has been referred to in this case as the "mid-continent oil field." That field produces great quantities of gasoline and petroleum products, which in part are shipped to and consumed in western trunk line territory. Some of its moves by rail and some by pipe line. In portions of the territory, therefore, pipe lines are in competition with the railroads, and railroad rates on gasoline and other products of petroleum are affected thereby. In other portions, rates are unaffected, or only slightly affected, by such factor. The reasonableness of rates from the midcontinent field to the destination territory here referred to, the relationship of rates prevailing from the midcontinent field to one section of the territory, to rates from that field to another section, and the relationship of rates from the midcontinent field to rates from other competiting fields into this destination territory, having been given much consideration by the Interstate Commerce Commission. See Midcontinent Oil Rates, 36 I. C. C. 109; Midcontinent Oil Rates, 1925, 112 I. C. C. 421; Midcontinent Oil Rates, 1925, Second Supplemental Report, 139 I. C. C. 605.

This suit was brought to enjoin an order of the commission entered December 1, 1931, upon a rehearing had in January, 1930, in Docket Number 17304, International Oil Co. et al. v. Abilene & Southern Railway Co. et al., and upon a separate hearing had in March, 1929, in Docket Number 21737, Dacotah Oil Co. et al. v. A. T. & S. F. Ry. Co. The title case, Number 17304, was instituted July 15, 1925, by persons engaged in the oil business in various places in North Dakota and western Minnesota, asserting that the rates on petroleum

343 products from the midcontinent field were and would continue to be unjust and unreasonable, in violation of section 1 of the interstate commerce act. The proceedings known as Number 21737 were commenced by the Dacotah Oil Company on November 30, 1928, by a complaint which asserted that rates prescribed by the commission in Number 17304 from the midcontinent field to Buffalo, Valley City, Jamestown, and Cleveland, North Dakota, were unjust and unreasonable. Number 17304 was originally heard in October, 1925. The commission issued its report March 5, 1928 (Midcontinent Oil Rates, 1925, Second Supplemental Report, 139 I. C. C. 605), which

covered not only the issues in Number 17304, but also the issues in another proceeding, Number 16309, South Dakota Independent Oil Jobbers Association v. A. T. & S. F. Ry. Co., et al., in which the lawfulness, under sections 1 and 3 of the interstate commerce act, of rates on petroleum products from the midcontinent field to points in South Dakota were challenged, and which also covered certain reserved issues in a consolidated proceeding known as Midcontinent Oil Rates, 1925, which called in question the lawfulness, under sections 1, 2, and 3 of the act, of rates on gasoline and petroleum products from the midcontinent field to western trunk line territory. In its report and order of March 5, 1928, the commission prescribed specific rates from points in the midcontinent field to representative destinations in South Dakota, North Dakota, and northwestern Minnesota, and ordered them established on June 14, 1928, upon a finding that the existing rates were and would be unreasonable and unduly prejudicial to the extent that they should exceed the rates prescribed. The commission stated that the prescribed rates "had for their purpose the creation of a more consistent and reasonable relationship of rates between those points and other points in western trunk line territory." The rates prescribed and related rates to other destinations in South Dakota, North Dakota, and northwestern Minnesota became effective June 14, 1928.

344 On May 4, 1928, the petitioners filed with the commission an application asking it to postpone the effective date of its order of March 5, 1928, and to reopen Midcontinent Oil Rates, 1925, and to grant them a further hearing upon a single record with respect to the level of the rates from the midcontinent field to destinations in Nebraska, Iowa, South Dakota, North Dakota, and Minnesota. This application was denied February 11, 1929.

In the summer of 1928 the commission suspended certain tariffs filed by these carriers proposing reductions in rates from Wyoming refining points in the Wyoming oil field to destinations in South Dakota, North Dakota, Iowa, and Minnesota, which proposed to restore the relationship existing prior to June 14, 1928, between rates from the Wyoming field to the destination territory here involved and those from the midcontinent field. After an investigation and hearing, the commission ordered the suspended tariffs cancelled on the ground that the proposed rates would disturb the relationship existing between the rates from the Wyoming and midcontinent fields established by its Second Supplemental Report in Midcontinent Oil Rates, 1925, and would result in undue and unreasonable prejudice and disadvantage to shippers and localities in the midcontinent field contrary to section 3 of the act.

The complaint of the Dacotah Oil Company filed November 30, 1928, Number 21737, was heard by the commission at Jamestown, North Dakota, on March 6, 1929. By order of June 10, 1929, the commission opened Number 17304 for further hearing at Fargo on January 13, 1930.

After the commission had reopened Docket Number 17304, the Standard Oil Company of Indiana and the Public Service Commission of Wyoming filed complaints charging that rates from Wyoming on petroleum and its products to points in North Dakota, South Dakota, Iowa, and Minnesota were unjust and unreasonable as compared with such rates from the midcontinent field, and unduly prejudicial to shippers and producers in Wyoming, and unduly preferential to those located in the midcontinent field. Upon notice from the Interstate Commerce Commission that Number 17304 was assigned for hearing at Fargo, North Dakota, on January 13, 1930, counsel for the petitioners requested a postponement in order that the proceeding might be consolidated with pending complaints attacking the relationship between the rates from the midconti-
345 nent field and those from Wyoming. The request was denied.

The petitioners on January 3, 1930, filed a formal petition asking the commission to consolidate the proceedings for hearing and decision upon a common record, and to postpone the hearing set for January 13, 1930, at Fargo in Number 17304. On January 14, 1930, they filed a petition with the commission to reopen Midcontinent Oil Rates, 1925, for further hearing with respect to the rates prescribed from the midcontinent field to Lincoln and Omaha, Nebraska, Des Moines, Fort Dodge, Sioux City, and Mason City, Iowa; Sioux Falls, South Dakota, and St. Paul and Duluth, Minnesota, and to territory beyond such gateway points and to consolidate with such proceedings the Wyoming complaint and Numbers 17304 and 16309, and all other complaints pending involving the rates on petroleum products from all producing points to said destinations for hearing upon a single record. These petitions were denied on April 14, 1930.

The order of December 1, 1931, prescribes reduced rates effective March 15, 1932, in lieu of rates previously prescribed by the commission and made effective June 14, 1928, for the transportation of gasoline and petroleum products, taking the same rates in carloads from points in the midcontinent field to destinations in North Dakota and in that part of Minnesota lying north and west of the Great Northern Railroad from Duluth to Pipestone, Minnesota. The old rates and the reduced rates are found in Appendix B, on pages 448 to 460 of the commission's report.

The record upon which the order of December 1, 1931, which is here complained of, was based was closed January 15, 1930. Since that time the financial condition of the carriers has been seriously affected by changed economic conditions recognized both by the commission and by the courts. See Fifteen Per Cent Case, 1931, Ex Parte Number 103, In the Matter of Increases in Freight Rates and Charges, 178 I. C. C. 539; A., T. & S. F. Ry. Co. v. United States, Interstate Commerce Commission et al., 284 U. S. 248. An affidavit of the assistant general auditor of the Northern Pacific Railway Company, submitted in support of the application for a preliminary injunction, indicates that, so far as his road was concerned, the

effects of the change in economic conditions did not manifest
346 themselves until the end of 1930, but were plainly evident by the end of 1931; that the revenues of the Northern Pacific declined from $77,000,000 in 1929 to $65,000,000 in 1930 and to $51,000,000 in 1931. The general effect of the change in economic conditions upon the revenues of these and other carriers is a matter of common knowledge.

On February 3, 1932, the petitioners filed with the commission a petition in their own behalf and on behalf of the other defendants in Numbers 17304 and 21737, asking the commission to vacate or to postpone the effective date of the order of December 1, 1931, and to grant them a rehearing and reconsideration thereof, and to reopen the proceedings for the taking of further evidence in order to permit the defendants to show changed conditions, and for such other and further relief as might be just and proper. The petition for rehearing set forth the changed economic conditions, the fall in revenue, the facts as to the movement of petroleum products, asserted that rates on such products could reasonably be raised without burdening the traffic, and set forth the effect which the order reducing rates would have upon the carriers' revenues, which indicated that it would mean a total loss in revenue to the carriers affected of some $600,000. On March 7, 1932, the commission denied the petition, and the carriers were obliged to put into effect the rates prescribed in the order.

The petitioning carriers then instituted this suit and applied for a preliminary injunction. In support of the motion for such injunction, affidavits were filed, for the purpose of showing the effect of the order of the commission upon the revenues of the carriers, and that shippers of petroleum products from the midcontinent field to the destination territory might reasonably be required to pay higher rates than those fixed by the order of the commission.

Since the questions involved are questions of law, the record upon which the commission entered its order of December 1, 1931, not being before us, counsel agreed that the case should be finally determined without another hearing.

347 The contentions of the petitioners with respect to the order of December 1, 1931, are substantially these:

1. That the commission proceeded upon a misconception of the law and of its powers and duties and exceeded its powers. This contention is based upon the claim that it appears upon the face of the commission's report that in requiring the rates prescribed by it as just and reasonable and otherwise lawful, to be reduced on March 5, 1932, it did not act in the exercise of the authority conferred upon it by law to determine whether said rates would for the future be just and reasonable in and of themselves with regard to the service rendered, but proceeded upon the erroneous assumption that arbitrary power was conferred upon it to reduce rates which were otherwise just and reasonable, in order to bring about what it con-

ceived to be reasonable and consistent relationships to other rates prescribed by the commission with relation to depressed competitive rates conceded by it to be not representative of maximum reasonable rates, and to do this without having before it any issues of unjust discrimination or undue or unreasonable preference or prejudice and without making any findings of discrimination or undue or unreasonable preferences or prejudices.

2. That the hearing granted to the carriers was inadequate and manifestly unfair, and that the conduct of the proceedings by the commission and its action in the premises was so arbitrary and unreasonable as to amount to a denial to the petitioners of due process of law, in violation of the fifth amendment to the Constitution of the United States. This contention is based principally on the denial by the commission of the various petitions and requests by the carriers, namely, the petition to postpone the effective date of the order of March 5, 1928, and to reopen Midcontinent Oil Rates, 1925; to grant a further hearing upon a single record with respect to the level of rates from midcontinent field to destinations in Nebraska, Iowa, North Dakota, South Dakota, and Minnesota, denied by the order of February 11, 1929; the request that the hearing in Number 17304 set for Fargo on January 13, 1930, be postponed in order that that proceeding might be consolidated with the pending complaints attacking the relationships between the rates from the midcontinent field and the rates from Wyoming; the petition of January 3, 1930, asking for such consolidation
348 and for the postponement of a hearing in Number 17304; the petition of January 14, 1930, to reopen Midcontinent Oil Rates, 1925, for further hearing with respect to rates prescribed from the midcontinent field to Lincoln and Omaha, Nebraska; Des Moines, Fort Dodge, Sioux City, and Mason City, Iowa; Sioux Falls, South Dakota; and St. Paul and Duluth, Minnesota; and to territory beyond such gateway points, and to consolidate with said proceeding the Wyoming complaints; the petition of February 3, 1932, to set aside or stay the effect of the order of December 1, 1931, and to grant a rehearing on account of changed conditions.

It is asserted that the denial of the requests to reopen Midcontinent Oil Rates, 1925, and to reopen the proceedings in which rates from the midcontinent field to South Dakota had been prescribed, and to consolidate these proceedings for hearing and decision with Docket Numbers 17304 and 21737, involving the rates to North Dakota and northwestern Minnesota, precluded the petitioners from securing any correction by the commission of any rate relationships which the commission might deem improper as between the rates to North Dakota and northwestern Minnesota, on the one hand, and the rates previously prescribed from the midcontinent field to destinations in South Dakota, Iowa, or southeastern Minnesota, except by a reduction in the former rates, and that thereby the commission denied to the petitioners a fair hearing upon the question of the inherent rea-

sonableness of the rates to North Dakota and northwestern Minnesota; that, in like manner, the commission, by denying the consolidation of issues in Numbers 17304 and 21737 with the Wyoming complaints for hearing and decision upon one record, precluded a correction of any rate relationships which the commission might find to be unlawful as between rates from Wyoming and rates from the midcontinent field; that the commission arbitrarily confined its consideration of rate relationships to those between the rates assailed and the rates previously prescribed from the midcontinent field to destinations in South Dakota and other portions of western trunk line territory. With respect to the denial of the petition to vacate or stay the order of December 1, 1931, on account of the changed economic conditions, the petitioners say:

349 "It is the contention of petitioners that in denying said petition, and, by so doing, requiring the order, based upon records which had ceased to be representative of present or future conditions, to become effective, without regard to the financial condition of the carriers or to the inherent reasonableness either of the rates prescribed or of the rates to which the commission related them, the commission acted so arbitrarily and unreasonably as to render its order void."

Reduced to its lowest terms, this controversy involves two questions:

1. Does the record before us show that the commission exceeded its powers?

2. Were the petitioners granted a fair hearing?

We can not go behind the report and order of the commission, and must answer the first question from an examination of the report.

The commission says:

"In our former report (Second Supplemental Report in Midcontinent Case of 1925) we also prescribed maximum reasonable rates from the midcontinent field to a number of points in adjacent territory in South Dakota reached by the lines of two of the principal defendants operating in the destination territory. The latter are relatively higher, particularly those to points west of the Missouri River, than the rates to Sioux City, Willmar, St. Paul, and the other gateways. In Appendix A hereto the rates and short-line distances to those gateways and to representative points in the destination terriory are compared with the rates prescribed to the South Dakota points, using the first-class rates under the southwestern scale as a basis of comparison."

The commission further says:

"Defendants contend that the rates assailed should not be measured by the rates prescribed to South Dakota because the traffic here considered does not normally move through that State; because the rates thereto bear no necessary relation to those to North Dakota; and because they are unduly low. The first two grounds relied upon were not recognized in recent decisions in which we prescribed a

uniform level of rates on traffic from the Southwest to the eastern sections of both States. Nor does defendants' comparison of the rate to Mitchell, S. Dak., with rates from Tulsa, Okla., to points in Indiana prescribed in Indiana State Chamber of Commerce v. A., T. & S. F. Ry. Co., 96 I. C. C. 485, 112 I. C. C. 481, lend support to the latter conclusion. The rate to Mitchell is on a somewhat lower level than the average of the rates to South Dakota, and distances from Tulsa to the Indiana destinations are not representative of those from all producing points in Group 3.

"Complainants and defendants introduced exhibits showing relative traffic density and other statistical data bearing upon transportation conditions in the territory between Kansas City and St. Paul through which the traffic generally moves, in the destination territory here considered, and in South Dakota. Complainants contend that their comparisons fully sustain the reasonableness of the rates which they seek, both for the future and for the past, and that they justify a level of rates in western North Dakota no higher than in the eastern portion of that State. Defendants stress the operating difficulties encountered by the northern lines during the winter months and the character of the service which they render in the distribution
350 of the traffic. In the latter connection the Northern Pacific shows that of 2,465 cars delivered by it in the first eight months of 1929, 45 per cent were destined to branch-line points. On the other hand, by far the heaviest movement takes place in the summer and early fall months, and the lines performing the service to the Twin Cities handle the traffic in train loads to that point."

Under the heading "Rates for the future" the commission says:

"The record on further hearing demonstrates the necessity of a further revision of the rates assailed to bring about a reasonable and consistent adjustment. The present rates grade up too rapidly beyond the gateways on the eastern border of the destination territory * * *; the rates to North Dakota especially are on too high a level compared with the rates prescribed to South Dakota; and those from Kansas City to North Dakota are generally higher than the Wyoming-Montana scale recently described in Rates on Petroleum and Its Products in Montana, 176 I. C. C. 707."

Under the heading "Findings" appears the following language:

"Upon the whole record now before us we find that the rates assailed prior to June 14, 1928, were not unreasonable; * * * and that on and after the effective date of our order for the future, the rates assailed will be unreasonable to the extent they exceed or may exceed those shown from Group 3 in column F of Appendix B, plus or minus said differentials from the other origin groups. Our previous findings are modified accordingly."

The commission refused to grant reparation to the complainants in Number 17304 except in certain specific instances and confined itself to ordering reduction of rates for the future. Three commissioners dissented.

In his dissenting opinion Commissioner Mahaffie says:

"The principal issue here, as I view it, is one of the relationship in the rates resulting from our previous decisions. The adjustment here required is based very largely upon our previous findings in the Midcontinent cases, which we have repeatedly stated required rates below reasonable maxima. Notwithstanding the fact that many of the rates assailed were published in compliance with our orders, the majority now use the southwestern class rate revision for comparative purposes to arrive at a conclusion that rates previously prescribed were unreasonable. The record is convincing that the rates assailed in the territory considered should be more properly aligned. That should be done without sacrifice of carrier revenue. Revision of rate adjustments upon such precedents as the majority here use and the condemnation of rates previously prescribed as reasonable usually result, as they result here, in rates so low as to make unwarranted reductions in carrier revenue."

It seems quite evident from the language of the report that the complainants before the commission urged the propriety of taking the South Dakota rates as a basis of comparison, while the railroads claimed that such rates afforded an improper basis because they were too low and for other reasons. It must, we think, be assumed, in the absence of the record upon which the report was based, that the commission was justified in reaching the conclusion which it evidently did reach, that the South Dakota rates, at the time
351 of the hearing, represented reasonable maxima, and that they did therefore furnish a proper basis for determining the reasonableness of the rates assailed.

The dissenting opinion of Commissioner Mahaffie indicates that in his opinion the report of the majority of the commissioners resulted from relating the assailed rates to the South Dakota rates which he considered too low to furnish a proper basis of comparison. His opinion is consistent with the theory that the commission was interested only in fixing rates which were relatively reasonable, without regard to whether they were compensatory for the service rendered; and it is also consistent with the theory that the majority of the commissioners were of the opinion that the South Dakota rates represented reasonable maxima and that the North Dakota rates were out of line.

It is true, as pointed out by the petitioners, that the commission had previously said that the rates to South Dakota were below reasonable maxima. That, however, would not foreclose the commission, at a later time, from changing its mind and reaching another conclusion upon a different record. What we are asked to do is to find from the language of the report that the commission entirely disregarded the reasonableness of the rates as such and proceeded upon the theory that it might arbitrarily relate these rates to other rates, although it knew the latter to be less than those which might reasonably be charged for the service rendered. We do not think that

we would be justified in so finding. The issue as to whether these rates were reasonable was squarely before the commission. In determining that question it had the right to compare the rates assailed with other rates which in its judgment formed a proper basis of comparison. See Interstate Commerce Commission v. Louisville & Nashville R. R. Co., 227 U. S. 88, 98, in which the court said, speaking of evidence of other rates than those in question:

352 "The value of such evidence necessarily varies according to circumstances, but the weight to be given it is peculiarly for the body experienced in such matters and familiar with the complexities, intricacies and history of rate making in each section of the country. So, too, the fact that a commodity rate is low may cast some light on the reasonableness of the higher rate on the class, from which that commodity was taken or to which it might legally be restored."

See, also, Louisville & Nashville R. R. Co. v. United States, 238 U. S. 1, 12, from which we quote the following language:

"The same is true of determining, by comparison, the reasonableness of freight charges. Until some standard is adopted they may prove nothing—even where the two hauls are over the same mileage. For the rate attacked may tend to show that the others are too low—while they in turn might be relied on to prove that the first is too high. Both may be unreasonably high, or too low because compelled by conditions over which the carrier had no control. Water competition, rail competition, and competition of markets enter so largely into the establishment of rates that mere distance is not necessarily a determining factor—indeed, the statute itself recognizes that there may be circumstances under which it is lawful to charge less for a long haul than for a short haul over the same road. But while all this be true it is, nevertheless, a fact that a comparison of rates between two points on the same road, or with the charges on other roads, may furnish evidence of probative value.

The following language appears on page 15:

"Giving the widest possible effect to the fact that mere comparison between rates does not necessarily tend to establish the reasonableness of either, it is still true that, when one of many rates is found to be higher than all others, there may arise a presumption that the single rate is high. And when to that is added the fact that some of the comparative and lower rates had been prescribed by the com'ission, there was at least a prima facie standard which, after allowing for dissimilarity in conditions, might be used along with all the other evidence in order to test the reasonableness of the Nashville rate."

In Western Paper Makers' Chemical Co. v. United States, 271 U. S. 268, 271, the court said on the same subject:

"There was ample evidence to support the finding that the joint through rates regarded as entireties were reasonable and justified. Prior existing rates, whether locals or such proportionate rates from

a key point to points of destination as were made applicable to this particular class of traffic, or through rates upon other commodities moving from similar points of origin, are proper matters for consideration in establishing new through rates. To consider the weight of the evidence is beyond our province."

The Supreme Court, in speaking of the then nonexistent power of the commission to fix minimum rates, in the case of Skinner & Eddy Corporation v. United States, 249 U. S. 557, 565, said:

353 "The commission's power over them (the carriers) in this respect extends no further than to discourage the making of unduly low rates by applying deterrents. One such deterrent is found in the fact that low rates, because voluntarily established by the carrier, may be accepted by the commission as evidence that other rates, actual or proposed, for comparable service are unreasonably high. Board of Trade of Carrollton, Ga., v. Central of Georgia Ry. Co., 28 I. C. C. 154, 164; Sheridan Chamber of Commerce v. Chicago, Burlington & Quincy R. R. Co., 26 I. C. C. 638, 647. Compare Louisville & Nashville R. R. Co. v. United States 238 U. S. 1, 11 et seq."

Whether a rate is voluntarily established by a carrier or prescribed by the commission, if in the judgment of the commission it represents all that may reasonably be charged for the service performed, there would seem to be no logic in holding that it would not constitute some evidence of what might properly be charged for a similar service under similar conditions.

An order of the Interstate Commerce Commission based upon an assumption of powers not possessed by it is void and its enforcement will be restrainted by the courts. Southern Pacific Co. v. Interstate Commerce Commission, 219 U. S. 433. It must, however, clearly appear that the commission did exceed its powers in making an order before the courts will interfere. In the case above referred to the Supreme Court had before it the record, and in determining that the commission assumed powers not possessed it had recourse to the record.

In the case of St. Louis & O'Fallon Ry. Co. v. United States, 279 U. S. 461, the court determined from the report itself that the commission had exceeded its powers. It said (page 485):

"The report of the commission is long and argumentative. Much of it is devoted to general observations relative to the method and purpose of making valuations; many objections are urged to doctrine approved by us; and the superiority of another view is stoutly asserted. It carefully refrains from stating that any consideration whatever was given to present or reproduction costs in estimating the value of the carrier's property. Four dissenting commissioners declare that reproduction costs were not considered; and the report itself confirms their view. Two of the majority avow a like understanding of the course pursued."

354 While it may be true here that the commission overlooked the question as to whether the rates prescribed by it were

intrinsically unreasonable, we do not think that that sufficiently appears from the face of the report, and the commission denies that it failed to consider that factor.

We think that the refusal of the commission to combine with the proceeding challenging the reasonableness of the rates in North Dakota and northwestern Minnesota other proceedings relating to similar rates to other points in western trunk line territory was not so unreasonable as to justify the setting aside of the order complained of, and was within the discretion of the commission. The hearing with respect to the rates assailed might have shown that they were, in comparison with other rates, too high, or that the other rates were too low. If the commission reached the conclusion that the rates assailed were not too high, that would have ended the controversy. If it found them out of line with other rates which it considered reasonable, it could reduce them without disturbing the other rates. It had before it the complaints of certain shippers as to certain rates in a certain territory, and the carriers, we think, had no absolute right to require that other controversies affecting other shippers and other territories be injected. The denials by the commission of the petitions for consolidation were, we think, within its discretion.

The serious question in this case is whether the petitioners, in view of the rule announced by the Supreme Court in A. T. & S. F. Ry. Co. v. United States, 284 U. S. 248, were entitled to a rehearing because of changed economic conditions, and whether a denial of their application, therefore, was the equivalent of a denial of a fair hearing. In the case referred to, upon which the petitioners rely, the commission had, of its own motion, investigated rate structures in the western district with particular reference to grain rates. The record was closed in September, 1928. An order was entered fixing maximum rates on grain and its products, the effective date of which order was from time to time postponed. In February, 1931, before the order became effective, the carriers petitioned for a
355 reopening of the case, setting up in detail and offering to prove that, since the closing of the record in 1928, economic changes had impaired their earnings and their credit, and that the order would reduce their revenues greatly; that, regardless of the question of its validity and propriety when made, it would no longer be valid and proper under existing circumstances. The Supreme Court held that the petition was not an ordinary petition for a rehearing, but was in the nature of a supplemental bill presenting a new and radically different situation, which had supervened since the record before the commission had been closed; that the court would take judicial notice of the economic depression amounting to a changed economic level, which came after the close of the record in 1928, and which still existed in 1931, when the petition to reopen was filed, and that denial of the petition exceeded the permitted range of the commission's discretion, since a fair hearing is a fundamental requirement.

The record here was closed on January 15, 1930, although the matter was not argued before the commission until October, 1930. The petition for rehearing was made before the effective date of the order of December 1, 1931, and shortly after the decision in A., T. & S. F. Ry. Co. v. United States, supra. The facts in this case and in that case are different. The proceeding here in question was not initiated by the commission itself. The number of carriers involved in this case is not nearly so great; the territory affected is not nearly so large; the amount of carrier revenue affected by the reduced rates in this proceeding is comparatively small. The defendants and interveners feel that these things distinguish that case from this one. They believe that the Supreme Court was dealing with a specific case, and that the rule laid down by it can not be said to be properly applicable to a situation where the questions involved are not so important and the consequences so grave. It is logically impossible to see why the number of carriers, the extent of territory, the amount of carrier revenue affected, can furnish the solution to the question as to whether a hearing by the commission upon which an order reducing rates was based is fair or unfair, or whether its action in denying the petition for a rehearing was arbitrary or otherwise. A single carrier with a few miles
356 of road, operating in a limited territory, is as much entitled to a fair hearing and fair treatment at the hands of the commission as a large group of carriers operating in any vast territory, and the law will certainly afford it the same protection. It has the same rights as the powerful group and may be very much more in need of them.

Apparently, what the Supreme Court held was that before a reduced rate, which was based upon a record made prior to the economic change in values and business which commenced in the fall of 1929 and has grown more pronounced ever since, might become effective, it was incumbent upon the commission, upon a suitable application of the carriers affected by such rate, setting up the changed conditions and facts which indicated that the rate fixed was no longer justified, to grant a rehearing so as to permit the carrier to produce evidence showing that the changed conditions justified a changed order. In other words, a rate which is prescribed upon a record not representative of present conditions but of past conditions which were radically different, is not a rate prescribed after a fair hearing if the commission has refused to accord to the carriers a hearing as to changed economic conditions called to its attention by a supplemental petition prior to the effective date of the rate order. The language of the Supreme Court is (A. T. & S. F. Ry. Co. v. U. S., supra, page 262):

"In the instant proceeding the hearing accorded related to conditions which had been radically changed, and a hearing, suitably requested, which would have permitted the presentation of evidence

relating to existing conditions, was denied. We think that this action was not within the permitted range of the commission's discretion, but was a denial of right."

A record closed January 15, 1930, was not representative of conditions existing in March, 1932. The most that can be said is that it was more representative of them than a record closed in 1928. It can be claimed that on December 1, 1931, the commission knew of the change in economic conditions and the serious effects that it was having on the revenue of the carriers, and that the commission must be assumed to have been of the opinion that the order which it then entered was a fair and proper order, taking these conditions into consideration. But this opinion on the part of the commission was not the equivalent of a hearing, because it gave no opportunity to the carriers to present evidence or arguments. It may be true, as
357 the defendants claim, that the petitioners should, during 1931, have made their application for a rehearing, based upon changed conditions, and should not have waited until after the decision in the A., T. & S. F. case before presenting it. It is probably true that that decision induced them to file their application for a rehearing. However, an order which has the effect of reducing the revenues of the petitioners substantially does not affect them alone, but is a matter of public interest; and if the order reducing the rate is wrong, or if it was made upon a record which does not now justify its existence, or if the carriers were denied a fair hearing, it should be set aside, not only in the interest of the carriers but in the public interest as well. There would seem to be no impropriety in the petitioners' taking advantage of the rule of law announced by the Supreme Court, if they properly can bring themselves within the rule, even if, in the absence of such a decision, they would have taken no such action.

It seems to us that, in view of A., T. & S. F. Ry. Co. v. United States, supra, the commission could not, in view of the application of the carriers, make the order of December 1, 1931, reducing rates, effective without according them opportunity for a hearing as to the effect of changed economic conditions upon the question of the proposed reduction of rates, and that what the commission may have had in mind or what it may have said or done in other proceedings is of no consequence. The facts remain that the revenues of these carriers were being substantially reduced by the order of December 1, 1931; that the record upon which the order was based was not representative of existing conditions; and that a proper petition for a rehearing, in the nature of a supplemental bill, had been filed before the rate order became effective, and that such petition was filed with reference to these particular rates and to this particular proceeding and did not refer to rates generally nor to other proceedings.
358 Because of the commission's denial of the petition to reopen on the ground of changed conditions, we reach the conclusion

that the order of December 1, 1931, can not be sustained, and should be enjoined.

The petitioners may present findings and decree upon reasonable notice to the defendants and the interveners.

Dated this 19th day of July, 1932.

JOHN B. SANBORN,
U. S. Circuit Judge.
WM. A. CANT,
U. S. District Judge
GUNNAR H. NORDBYE,
U. S. District Judge

[File endorsement omitted.]

359 In United States District Court, District of Minnesota, Third Division

In Equity, No. 2444

NORTHERN PACIFIC RAILWAY COMPANY, GREAT NORTHERN RAILWAY Company, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Minneapolis, St. Paul and Sault Ste. Marie Railway Company, and Chicago and Northwestern Railway Company, petitioners

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, defendants

NORTHWEST PETROLEUM ASSOCIATION AND FARMERS UNION COOPERATIVE Oil Company, et al., interveners

Final decree

Filed Aug. 5, 1932

The cause came on for hearing on the 18th day of April, 1932 before a statutory three-judge court convened by the Honorable Gunnar H. Nordbye, United States District Judge for the District of Minnesota, Third Division, pursuant to section 266 of the
360 Judicial Code, by calling to his assistance the Honorable John B. Sanborn, United States circuit judge for the Eighth Circuit, and the Honorable William A. Cant, judge of the District Court of United States for the Third Division, District of Minnesota, upon the application of the above-named petitioners, praying an interlocutory injunction and final decree restraining and suspending the effect and enforcement of that certain order entered by the Interstate Commerce Commission on December 1, 1931, in Docket No. 17304, International Oil Company, et al. v. Abilene & Southern Railway Company, et al., and in Docket No. 21737, Dacotah Oil Company, et

al. v. Atchison, Topeka & Santa Fe Railway Company. The said cause having been heard before said statutory three-judge court and the respective parties having stipulated in open court that the cause should be determined as upon final hearing upon the record without further testimony, and upon briefs thereafter to be filed,

It is ordered, adjudged, and decreed that that certain order entered by the Interstate Commerce Commission on December 1, 1931, in Docket 17304, International Oil Company, et al. v. Abilene & Southern Railway Company, et al., and in Docket No. 21737, Dacotah Oil Company, et al. v. Atchison, Topeka & South Fe Railway Company, be permanently and perpetually enjoined, restrained, and the effect thereof suspended, and that the defendants and each of them, and each of their officers, servants, and employees, and any and every person acting under and by virtue of the authority of said order be perpetually enjoined from in any way enforcing or attempting to enforce the provisions of said order against the petitioners, or from interfering with the immediate restoration by the petitioners of the rates on petroleum products authorized and prescribed by a report and order of the Interstate Commerce Commission entered on
361 March 5, 1928, in Midcontinent Oil Rates, 1925, Second Supplemental Report, 139 I. C. C. 605, wherein it made findings upon the issues in No. 17304, International Oil Company, et al. v. Abilene and Southern Railway Company, et al., and that the rates so prescribed be restored and made effective with all convenient speed consistent with the act to regulate commerce, approved February 4, 1887, as amended.

Dated this 1st day of August, 1932.

JOHN B. SANBORN,
U. S. Circuit Judge.

WM. A. CANT,
U. S. District Judge.

GUNNAR H. NORDBYE,
U. S. District Judge.

[File endorsement omitted.]

362 In United States District Court

[Title omitted.]

Findings of fact and conclusions of law

Filed Aug. 5, 1932

This cause came on for hearing before a statutory three-judge court convened by the Honorable Gunnar H. Nordbye, United States district judge for the District of Minnesota, Third Division, pursuant to section 208 of the Judicial Code, by calling to his assistance the Hon-

orable John B. Sanborn, United States circuit judge for the Eighth Circuit, and the Honorable William A. Cant, judge of the District Court of United States for the Third Division, District of Minnesota, upon the application of Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Milwaukee, St. Paul, and Pacific Railroad Company, Minneapolis, St. Paul, and Sault Ste. Marie Railway Company, and Chicago and Northwestern Railway Company, petitioners in the above-entitled cause, praying an

363 interlocutory injunction and final decree enjoining, restraining, and suspending the effect and enforcement of that certain order entered by the Interstate Commerce Commission on December 1, 1931, in Docket No. 17304, International Oil Company, et al. v. Abilene & Southern Railway Company, et al., and in Docket No. 21737, Dacotah Oil Company, et al. v. Atchison, Topeka, & Santa Fe Railway Company, by enjoining and restraining, the defendants and each of them, and each of their officers, agents, servants, and employees, and any and every person acting under and by virtue of the authority of said order, from in any way enforcing or attempting to enforce the provisions of said order against the petitioners herein, or from interfering with the immediate restoration by the petitioners of the rates on petroleum products authorized and prescribed by a report and order of the Interstate Commerce Commission entered in said proceeding on March 5, 1928, on the ground that said order is beyond the lawful authority of the commission and wholly void.

This cause came on for hearing before said court in the United States District court room, in the city of St. Paul, Minnesota, on the 18th day of April, 1932. At that time the following persons appeared on behalf of petitioners: Mr. M. L. Countryman, jr., and Mr. A. H. Lossow. Mr. Elmer B. Collins appeared for the United States; Mr. E. M. Reidy for the Interstate Commerce Commission; Mr. Karl Knox Gartner and Mr. Elwin E. Hadlick for the intervener, Northwest Petroleum Association; and Messrs. Garberg and Johnson for the interveners, Farmers Union Cooperative Oil Company, et al.

At that time it was stipulated by counsel for the respective

364 parties that since the questions involved are questions of law and the record upon which the commission entered its order of December 1, 1931, was not before the court, that the cause should be determined as upon final hearing upon the record without further testimony and upon briefs thereafter to be filed.

Upon the verified petition and the affidavits of petitioners, the answers interposed, the arguments of counsel, and briefs filed by the respective parties, and the court being fully advised in the premises, makes the following findings of fact:

FINDINGS OF FACT

I

This cause is brought by the petitioners against the United States of America and Interstate Commerce Commission (hereinafter re-

ferred to as the commission) for the purpose of enjoining, setting aside, suspending, and annulling a certain order of the commission, entered on December 1, 1931, in proceedings entitled No. 17304, International Oil Company et al. v. Abilene & Southern Railway Company et al., and No. 21737, Dacotah Oil Company et al. v. Atchison, Topeka & Santa Fe Railway Company et al.

II

The petitioners are common carriers of property and passengers by railroad subject to the interstate commerce act. Petitioners, Northern Pacific Railway Company and Great Northern Railway Company, have their principal offices and their principal operating offices in the city of St. Paul, in the District of Minnesota,
365 Third Division. All of the petitioners own and operate lines of railroad extending into and through those portions of the States of Minnesota and North Dakota lying west of the cities of St. Paul and Minneapolis, Minnesota.

The defendant, United States of America, is sued pursuant to express authority of Congress of the United States, as provided in an act approved October 22, 1913, known as the district court jurisdiction act, being a part of the urgent deficiency appropriations act.

The defendant, Interstate Commerce Commission, is a public corporation and administrative tribunal created by the act to regulate commerce, approved February 4, 1887, as amended, and is specifically charged with the administration and enforcement of provisions of the interstate commerce act.

The order of the commission herein referred to was made upon the petition of numerous shippers and receivers of gasoline and other refined petroleum products residing or having their places of business in the States of Minnesota and North Dakota, and the matters covered by said order arose in part in the District of Minnesota, Third Division.

III

The States of Missouri, Kansas, Oklahoma, and Texas and portions of Louisiana and Arkansas form what is commonly known as the "midcontinent oil field." This field produces great quantities of gasoline and petroleum products which in part are shipped to and consumed in the States of Illinois, Iowa, Nebraska, Wisconsin, Minnesota, North Dakota, and South Dakota, which constitutes what is commonly known as western trunk-line territory. Some petroleum products move by rail and some by pipe line. In portions of the territory, therefore, pipe lines are in competition with the railroads,
and railroad rates on gasoline and other products of petroleum
366 are affected thereby. In other portions rates are unaffected, or only slightly affected, by such factor. Petitioners are the delivering lines for the transportation of petroleum products destined to points in North Dakota and northwestern Minnesota and

control the freight rates to said destinations from all producing or shipping points. They have no control, however, over the rates from the midcontinent field to other destinations in western trunk-line territory excepting to certain points in South Dakota west of Sioux Falls and Watertown.

IV

The reasonableness of rates from the midcontinent field to the destination territory referred to and the relationship of rates prevailing from the midcontinent field to one section of the territory, to rates from that field to another section, and the relationship of rates from the midcontinent field to rates from other competing fields into this destination territory, have been given much consideration by the Interstate Commerce Commission. See Midcontinent Oil Rates, 36 I. C. C. 109; Midcontinent Oil Rates 1925, 112 I. C. C. 421; Midcontinent Oil Rates 1925, Second Supplemental Report, 139 I. C. C. 605.

The proceedings in Docket No. 17304, supra, were instituted July 15, 1925, by persons engaged in the oil business in various places in North Dakota and western Minnesota, asserting that the rates on petroleum products from the midcontinent field were and would continue to be unjust and unreasonable, in violation of section 1 of the interstate commerce act. The proceedings in Docket No. 21737, supra, were commenced by the Dakota Oil Company on November 30, 1928, by a complaint which asserted that rates prescribed by the commission in No. 17304 from the midcontinent field to
367 Buffalo, Valley City, Jamestown, and Cleveland, North Dakota, were unjust and unreasonable. No. 17304 was originally heard in October, 1925. The commission issued its report March 5, 1928 (Midcontinent Oil Rates, 1925, Second Supplemental Report, 139 I. C. C. 605) which covered not only the issues in No. 17304, but also the issues in another proceeding, No. 16309, South Dakota Independent Oil Jobbers Association v. A. T. & S. F. Ry. Co., et al., in which the lawfulness, under sections 1 and 3 of the interstate commerce act, of rates on petroleum products from the midcontinent field to points in South Dakota were challenged, and which also covered certain reserved issues in a consolidated proceeding known as Midcontinent Oil Rates, 1925, which called in question the lawfulness, under sections 1, 2, and 3 of the act of rates on gasoline and petroleum products from the midcontinent field to western trunk line territory.

V

In its report and order of March 5, 1928, the commission prescribed specific rates from points in the midcontinent field to representative destinations in South Dakota, North Dakota, and northwestern Minnesota, and ordered them established on June 14, 1928,

upon a finding that the existing rates were and would be unreasonable and unduly prejudicial to the extent that they should exceed the rates prescribed. The commission stated that the prescribed rates "had for their purpose the creation of a more consistent and reasonable relationship of rates between those points and other points in western trunk line territory." The rates prescribed and related rates to their destinations in South Dakota, North Dakota, and northwestern Minnesota became effective June 14, 1928.

VI

On May 4, 1928, the petitioners filed with the commission
368 an application asking it to postpone the effective date of its order of March 5, 1928, and to reopen Midcontinent Oil Rates, 1925, and to grant them a further hearing upon a single record with respect to the level of the rates from the midcontinent field to destinations in Nebraska, Iowa, South Dakota, North Dakota, and Minnesota. This application was denied February 11, 1929.

VII

By its orders dated August 14 and August 23, 1928, the commission suspended certain tariffs filed by these carriers proposing reductions in rates from Wyoming refining points in the Wyoming oil field to destinations in South Dakota, North Dakota, Iowa, and Minnesota, which proposed to restore the relationship existing prior to June 14, 1928, between rates from the Wyoming field to the destination territory here involved and those from the mid-continent field. After an investigation and hearing (Investigation and Suspension Docket No. 3148, Petroleum and its Products from Points in Wyoming to South Dakota, North Dakota, Montana, Iowa, Minnesota, and Nebraska, 153 I. C. C. 363), the commission ordered the suspended tariffs cancelled on the ground that the proposed rates would disturb the relationship existing between the rates from the Wyoming and mid-continent fields established by its Second Supplemental Report in Midcontinent Oil Rates, 1925, and would result in undue and unreasonable prejudice and disadvantage to shippers and localities in the midcontinent field, contrary to section 3 of the act.

VIII

By order of June 10, 1929, the commission reopened Docket Number 17304 for further hearing at Fargo on January 13, 1930, whereupon the Standard Oil Company of Indiana on September 16, 1929, and the Public Service Commission of Wyoming on September 19, 1929, filed complaints, charging that rates from
369 Wyoming on petroleum and its products to points in North Dakota, South Dakota, Iowa, and Minnesota were unjust and unreasonable as compared with such rates from the mid-continent field, and unduly prejudicial to shippers and producers in Wyoming, and unduly preferential to those located in the mid-

continent field. (Standard Oil Company (Indiana) v. Chicago and Northwestern Railway Company et al, Docket 22714; Public Service Commission of Wyoming v. Chicago and Northwestern Railway Company et al., Docket 22733.)

IX

Upon notice from the Interstate Commerce Commission that Number 17304 was assigned for hearing at Fargo, North Dakota, on January 13, 1930, petitioners requested a postponement in order that the proceeding might be consolidated with pending complaints attacking the relationship between the rates from the mid-continent field and those from Wyoming. This request was denied. The petitioners, on January 3, 1930, filed a formal petition asking the commission to consolidate the proceedings for hearing and decision upon a common record, and to postpone the hearing set for January 13, 1930, at Fargo, in Docket Number 17304.

X

On January 14, 1930, they filed a petition with the commission to reopen Midcontinent Oil Rates, 1925, for further hearing with respect to the rates prescribed from the mid-continent field to Lincoln and Omaha, Nebraska; Des Moines, Fort Dodge, Sioux City, and Mason City, Iowa; Sioux Falls, South Dakota; and St. Paul, and Duluth, Minnesota, and to territory beyond such gateway points, and to consolidate with such proceedings the Wyoming complaint and Docket Numbers 17304 and 16309, and all other complaints pending involving the rates on petroleum products
370 from all producing points to said destinations for hearing upon a single record. These petitions were denied on April 14, 1930.

XI

The order of December 1, 1931, prescribes reduced rates effective March 15, 1932, in lieu of rates previously prescribed by the commission and made effective June 14, 1928, for the transportation of gasoline and petroleum products, taking the same rates in carloads from points in the midcontinent field to destinations in North Dakota and in that part of Minnesota lying north and west of the Great Northern Railroad from Duluth to Pipestone, Minnesota. The old rates and the reduced rates are found in Appendix B, on pages 448 to 460 of the commission's report.

XII

The record upon which the order of December 1, 1931, was based was closed January 15, 1930. Since that time the financial condition of the carriers has been seriously affected by changed economic conditions recognized both by the commission and by the courts. See

Fifteen Per Cent case, 1931, Ex Parte Number 103, In the Matter of Increases in Freight Rates and Charges, 178 I. C. C. 539; A. T. & S. F. Ry. Co. v. United States, Interstate Commerce Commission et al., 284 U. S. 248. As shown by an affidavit of the assistant general auditor of the Northern Pacific Railway Company, submitted in support of the petition, so far as his road was concerned, the effects of the change in economic conditions did not manifest themselves until the end of 1930, but were plainly evident by the end of 1931; the revenues of the Northern Pacific declined from $77,000,000 in 1929, to $65,000,000 in 1930, and to $51,000,000 in 1931. The general effect of the change in economic conditions upon the revenues of these and other carriers is a matter of common knowledge.

371

XIII

On February 3, 1932, the petitioners filed with the commission a petition in their own behalf and on behalf of the other defendants in Docket Numbers 17304 and 21737, asking the commission to vacate or to postpone the effective date of the order of December 1, 1931, and to grant them a rehearing and reconsideration thereof, and to reopen the proceedings for the taking of further evidence in order to permit them to show changed conditions, and for such other and further relief as might be just and proper. The petition for rehearing set forth the changed economic conditions, the fall in revenue, the facts as to the movement of petroleum products, asserted that rates on such products could reasonably be raised without burdening the traffic, and set forth the effect which the order reducing rates would have upon the carriers' revenues, which indicated that it would mean a total loss in revenue to the carriers affected of some $600,000 per annum. On March 7, 1932, the commission denied this petition, and the carriers were obliged to put into effect the rates prescribed in the order.

XIV

The petitioning carriers then instituted this suit and applied for a preliminary injunction. In support of the motion for such injunction, affidavits were filed, for the purpose of showing the effect of the order of the commission upon the revenues of the carriers, and that shippers of petroleum products from the midcontinent field to the destination territory might reasonably be required to pay higher rates than those fixed by the order of the Commission.

XV

The record here was closed on January 15, 1930, although the matter was not argued before the commission until October,
372 1930. The petition for rehearing was made before the effective date of the order of December 1, 1931. It was incumbent

upon the commission, upon a suitable application of the carriers affected by such rate, setting up the changed conditions and facts which indicated that the rate fixed was no longer justified, to grant a rehearing so as to permit the carriers to produce evidence showing that the changed conditions justified a changed order.

A record closed January 15, 1930, was not representative of conditions existing in March, 1932. An order which has the effect of reducing the revenues of the petitioners substantially, does not affect them alone, but is a matter of public interest; and if the order reducing the rate is wrong, or if it was made upon a record which does not now justify its existence, or if the carriers were denied a fair hearing, it should be set aside, not only in the interest of the carriers, but in the public interest as well. The revenues of these carriers were being substantially reduced by the order of December 1, 1931; the record upon which the order was based was not representative of existing conditions; a proper petition for a rehearing, in the nature of a supplemental bill setting forth the pertinent facts, had been filed before the rate order became effective with reference to these particular rates and to this particular proceeding.

CONCLUSIONS OF LAW

1. The action of the commission in denying the carriers' petition for rehearing filed February 3, 1932, and by so doing requiring the rates prescribed in its order of December 1, 1931, to become effective in the future without any hearing or consideration of the changed conditions therein set forth, was taken in disregard and in violation of the duties imposed upon it by the interstate commerce act,
373 was arbitrary and unreasonable, constituted an abuse of its administrative discretion, and was in excess of the authority conferred upon it by law, denied to the carriers a hearing or opportunity to be heard, and constituted a denial of due process of law, in violation of the fifth amendment to the Constitution of the United States.

2. The order of the commission is void and should be suspended and set aside and its operation permanently enjoined, solely because of the commission's denial of the petition to reopen on the ground of changed conditions.

By the court.

JOHN B. SANBORN,
U. S. Circuit Judge.
WM. A. CANT,
U. S. District Judge.
GUNNAR H. NORDBYE,
U. S. District Judge.

Dated this 1st day of August, 1932.
[File endorsement omitted.]

In United States District Court

Docket entries

Docket 2444

Title of case: Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, and Chicago, and Northwestern Railway Company vs. United States of America and Interstate Commerce Commission.

Attorneys for plaintiff: J. N. Davis, P. F. Goult, A. H. Lossow, R. J. Hagman, J. P. Plunkett, M. L. Countryman, Jr., 1018 N. P. Ry. Bldg., St. Paul.

For defendant: Elmer B. Collins, Spec. Asst. to Atty. Genl. of U. S., for U. S.; Edward M. Reidy, Asst. Chief Counsel, Interstate Commerce Comm., for Interstate Commerce Commission.

Date			Plaintiff's account	Received	Disbursed	Date			Defendant's account	Received	Disbursed
Month	Day	Year				Month	Day	Year			
May..	19	1932	N. P. Ry. Co....	15.00	.....						
Aug...	8	"	Earnings 2nd qr. 1932.	.....	5.00						

375 UNITED STATES DISTRICT COURT

Date—Month, day, year			Filings—Proceedings	No. of words	Clerk's fees		Amount reported in emolument returns
					Plaintiff	Defendant	
Apr.	1,	1932	Filed petition.....		5.00		
			Issued subpoena and two copies.				
"	8	"	Filed affidavit of service of subpoena and bill of complaint on Attorney General of U. S. and secretary of Interstate Commerce Commission, Apr. 4th.				
Apr.	12	"	Filed application of petitioners for interlocutory injunction and affidavits.				
"	"	"	Filed order calling in Hon. Wilbur F. Booth and Hon. John B. Sanborn, judges, Circuit Court of Appeals, Eighth Circuit, for hearing of application for interlocutory injunction and setting April 18th as hearing date, and also that five days notice of said hearing be given Interstate Commerce Commission and Attorney General of U. S.				
Apr.	18	"	Filed notice of application for interlocutory injunction, affidavits, and orders with admission of service.				
"	18	"	Filed answer of Interstate Commerce Commission.				
"	18	"	Filed answer of United States.				
"	18	"	Filed petition of Northwest Petroleum Association to intervene.				
"	18	"	Filed order permitting N. W. Petroleum Association to intervene.				
"	18	"	Filed petition & order for Farmers Union Coop. Oil Co. to intervene.				
"	18	"	Filed affidavit of Neal E. Williams.				
"	18	"	Filed affidavit of Ralph Ingerson.				
"	18	"	Filed affidavit of N. E. Williams for Witness Brown.				
"	18	"	Filed objections by defendants to introduction in evidence of affidavits.				
"	18	"	Ent. record of hearing—Deft. allowed 10 days to file brief. It is stipulated between counsel that this is the final hearing & that the decision shall be based on the matter submitted and all facts & findings now submitted.				
"	27	"	Filed brief of Interstate Commerce Commission (1 copy to Judges Sanborn, Cant, & Nordbye).				
"	29	"	Entered order extending time within which the United States may file brief to May 4th.				

UNITED STATES DISTRICT COURT—Continued

Date—Month, day, year	Filings—Proceedings	No. of words	Clerk's fees		Amount reported in emolument returns
			Plaintiff	Defendant	
May 2, 1932	Filed reply brief of petitioners (1 copy to each Judge named above).				
" 5 "	Filed brief of the United States (1 copy to each judge named above).				
" 10 "	Filed reply brief of petitioners to brief for the United States.				5.00
July 19 "	Filed decision and order for decree.				
Aug. 1 "	Filed notice, proposed findings, and proposed. Final decree & copy of decision and order for decree.				
" 5 "	Filed findings of fact, conclusions of Law.				
5	" final decree.		5.00		
" 6 "	Filed præcipe of U. S. Atty. for certified copy of decree and delivered same to U. S. Atty.				
376 Sept. 17, 1932	Filed petition for appeal by United States and Interstate Commerce Comm.				
" " "	Filed order allowing appeal.				
" 14 "	" assignments of error.				
" 17 "	" statement of jurisdiction.				
" " "	" Acknowledgment of service of appeal papers.				
" " "	" præcipe for transcript.				
" " "	" Notice to attorney general of State of Minnesota.				
" " "	" Summons and severance.				
" " "	" Order of severance.				
" " "	" Response to notice of summons & severance.				
" " "	" Citation.				

377 In United States District Court

[Title omitted.]

Petition for appeal by United States and Interstate Commerce Commission

Filed Sept. 17, 1932

United States of America and Interstate Commerce Commission, defendants, feeling themselves aggrieved by the final order or decree of the District Court, entered August 1, 1932, pray an appeal therefrom to the Supreme Court of the United States.

The particulars wherein they consider the final order or decree erroneous are set forth in the assignments of error on file to which reference is made.

They pray that a transcript of the record, proceedings, and papers on which the final order or decree was made and
378 entered duly authenticated may be transmitted forthwith to the Supreme Court of the United States.

LEWIS L. DRILL,
United States Attorney.
JOHN LORD O'BRIAN,
The Assistant to the Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
EDWARD M. REIDY,
Attorney for Interstate Commerce Commission.

[File endorsement omitted.]

379 In United States District Court

[Title omitted.]

Assignments of error

Filed Sept. 14, 1932

United States of America and Interstate Commerce Commission, defendants, by their respective counsel, now come and in connection with their petition for appeal file the following assignments of error on which they will rely on their appeal to the Supreme Court of the United States from the final order or decree of the District Court entered August 1, 1932.

The District Court erred—

1. In setting aside, annulling, and suspending the order of the Interstate Commerce Commission, entered December 1, 1931, in Docket No. 17304, International Oil Company *v.* Abilene & Southern Railway Company et al., 179 I. C. C. 435, and in granting and issuing a permanent injunction enjoining the enforcement, execution, and operation of said order.

380 2. In finding and holding that the commission abused its discretion in denying the petition for rehearing filed February 3, 1932.

Wherefore, said defendants pray that said decree of August 1, 1932, be reversed and set aside and that the order of the commission as aforesaid be given full force and effect.

LEWIS L. DRILL,
United States Attorney.
JOHN LORD O'BRIAN,
The Assistant to the Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
EDWARD M. REIDY,
Attorney for Interstate Commerce Commission.

[File endorsement omitted.]

381 In United States District Court

[Title omitted.]

Order allowing appeal

Filed Sept. 17, 1932

In the above-entitled cause, United States of America and Interstate Commerce Commission, defendants, having made and filed their petition praying an appeal to the Supreme Court of the United States from the final order or decree of the District Court, entered August 1, 1932, and having also made and filed assignments of error,

and having in all respects conformed to the statutes and the rules of court in such case made and provided:

It is ordered and decreed that the appeal be, and the same is hereby, allowed as prayed and made returnable within forty (40) days from the date hereof, and the clerk is directed to transmit
382 forthwith a properly authenticated transcript of the record, proceedings, and papers on which the order or decree was made and entered to the Supreme Court of the United States.

9/14/32.

JOHN B. SANBORN,
United States Circuit Judge.
WM. A. CANT,
United States District Judge.
GUNNAR H. NORDBYE,
United States District Judge.

[File endorsement omitted.]

P. 383 missing.

384 In United States District Court

[Title omitted.]

Notice to Attorney General of Minnesota

Filed Sept. 17, 1932

To Honorable HENRY N. BENSON,
Attorney General of the State of Minnesota:

Pursuant to urgent deficiencies act, October 22, 1913 (38 Stat. 221), you are hereby notified that the defendants, United States of America and Interstate Commerce Commission, have taken an appeal from the final order or decree of the District Court, entered August 1, 1932, to the Supreme Court of the United States, and that the order allowing the appeal makes the same returnable within forty (40) days from the date thereof.

LEWIS L. DRILL,
United States Attorney.
385 JOHN LORD O'BRIAN,
The Assistant to the Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
EDWARD M. REIDY,
Attorney for Interstate Commerce Commission.

Service of the foregoing notice and the receipt of a copy thereof are hereby acknowledged September 14, 1932.

HENRY N. BENSON,
Attorney General, State of Minnesota.
JAMES E. MARKHAM,
Deputy Attorney General.

[File endorsement omitted.]

386 In United States District Court

[Title omitted.]

Summons and severance

Filed Sept. 17, 1932

To the Northwest Petroleum Association, and Farmers' Union Cooperative Oil Company, of Jamestown, N. Dak.:

You are hereby invited to join with the United States and the Interstate Commerce Commission, defendants, in an appeal to the Supreme Court of the United States which they will seasonably prosecute from the final decree of the District Court entered August 1, 1932, in the above-entitled case, in which you are intervening defendants.

In the event of your failure to join, the United States of America and the Interstate Commerce Commission will prosecute the appeal for the reversal of said final decree of the District Court without joining you.

Dated , 1932.

387 LEWIS L. DRILL,
United States Attorney.
JOHN LORD O'BRIAN,
The Assistant to the Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
EDWARD M. REIDY,
Attorney for Interstate Commerce Commission.

Service of the foregoing summons and severance and the receipt of a copy thereof are hereby acknowledged this 10th day of September, 1932.

PETER B. GARBERG,
Attorney for Farmers' Union Cooperative Oil Company of Jamestown, N. Dak.
NORTHWEST PETROLEUM ASSOCIATION,
ELWIN E. HADLICK,
KARL KNOX GARTNER,
Its Attorneys.

[File endorsement omitted.]

388 In United States District Court

[Title omitted.]

Order of severance

Filed Sept. 17, 1932

This court having satisfactory proof that defendants United States of America and Interstate Commerce Commission have served

due notice upon intervening defendants Northwest Petroleum Association and Farmers' Union Cooperative Oil Company of Jamestown, North Dakota, that said defendants are appealing to the Supreme Court of the United States from the final decree entered August 1, 1932, by this court in said cause, and inviting said intervening defendants to join in said appeal:

It is hereby ordered that said defendants United States of America and Interstate Commerce Commission be and they are hereby allowed to prosecute their appeal to the Supreme Court in said cause without joining said intervening defendants and without reference to their interests in said cause.

9/14/32.

JOHN B. SANBORN,
United States Circuit Judge.
WM. A. CANT,
United States District Judge.
GUNNAR H. NORDBYE,
United States District Judge.

[File endorsement omitted.]

389 In United States District Court

[Title omitted.]

Pracipe for transcript of record

Filed Sept. 17, 1932

To the CLERK:

Please prepare a transcript of the record in the above-entitled cause in the matter of the appeal of the United States of America and Interstate Commerce Commission, defendants, and include therein, in the order given below, the following matter, viz:

1. Petition and exhibits thereto attached.
2. Answer of the Interstate Commerce Commission and exhibits thereto attached.
3. Answer of the United States.
4. Petition of Northwest Petroleum Association for leave to intervene and order permitting the intervention.
5. Petition for leave to intervene of the Farmers' Union Cooperative Oil Company of Jamestown, N. Dak., and order permitting the intervention.
6. Application for interlocutory injunction with affidavits attached of W. A. Darwitz, F. C. Sharood, W. D. O'Brien, and J. G. Morrison.
7. Order calling in two judges, dated April 9, 1932, and notice of hearing at St. Paul, Minn., on April 18, 1932.
8. Two affidavits of N. E. Williams and one of Ralph Ingerson, filed April 18, 1932.

9. Stipulation that the hearing shall be considered a final hearing
10. Opinion of the District Court.
11. Final decree.
12. Findings of fact and conclusions of law of District Court.
13. All dockets entries in their appropriate order.
14. Petition for appeal.
15. Assignments of error.

390 16. Order allowing appeal.

17. Notice serving appeal papers and acknowledgment of service thereof.
18. Notice of the attorney general of Minnesota and acknowledgment of service thereof.
19. Summons and severance, and order of severance.
20. Præcipe for record.
21. Citation on appeal.
22. Statement of Jurisdiction of Supreme Court of the United States, together with notice and acknowledgment of service.
23. Response of Northwest Petroleum Association and Farmers' Union Cooperative Oil Company to Notice of summons and severance and order thereon allowing them to become parties appellants.

LEWIS L. DRILL,
United States Attorney.
JOHN LORD O'BRIEN,
The Assistant to the Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
EDWARD M. REIDY,
Attorney for Interstate Commerce Commission.

Service of the foregoing præcipe for transcript of record and the receipt of a copy thereof are hereby admitted and acknowledged this 17th day of September, 1932.

M. L. COUNTRYMAN, JR.,
Solicitor for Northern Pacific Railway Company et al., petitioners.

[File endorsement omitted.]

391 [Citation in usual form showing service on M. L. Countryman, jr., filed Sept. 17, 1932, omitted in printing.]

393 [Blank folio.]

394–97, inc., missing. Juris. state.

398 In United States District Court

[Title omitted.]

Response to notice of summons and severance

Filed Sept. 17, 1932

The Northwest Petroleum Association and Farmers' Union Co-operative Oil Company of Jamestown, North Dakota, interveners herein, having been duly served on September 10, 1932, with a copy of notice of summons and severance by the United States of America and the Interstate Commerce Commission, defendants herein, declaring their intention to appeal from the decree entered by this court August 1, 1932, and inviting the said interveners to join in said appeal:

Said Northwest Petroleum Association and Farmers' Union Co-operative Oil Company of Jamestown, North Dakota, interveners and defendants herein, hereby join in said appeal of the United States of America and Interstate Commerce Commission and for the purpose of joining in said appeal they hereby adopt as their own the appeal papers filed by the United States of America and Interstate Commerce Commission, including petition for appeal, assignment of error, statement of jurisdiction, order allowing appeal, notice serving said papers upon the Northern Pacific Ry. Co. and the other petitioners herein, and præcipe for transcript of record.

399 And said Northwest Petroleum Association and Farmers' Union Cooperative Oil Company of Jamestown, North Dakota pray this court to include them in its order allowing the appeal herein from said final decree of August 1, 1932, as appellants in said cause.

ELWIN E. HADLICK,
KARL KNOX GARTNER,
Attorneys for Northwest Petroleum Association.
PETER B. GARBERG,
Attorney for Farmers' Union Cooperative Oil Co.

The United States of America and Interstate Commerce Commission, defendants in the above-entitled cause, by their respective counsel hereby consent to the above-named interveners joining in their appeal and to the adoption by said interveners of their appeal papers herein.

LEWIS L. DRILL,
United States Attorney.
JOHN LORD O'BRIAN,
The Assistant to the Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
EDWARD M. REIDY,
Attorney for Interstate Commerce Commission.

Service of the foregoing response to notice of summons and severance and receipt of a copy thereof are hereby acknowledged this 17th day of September, 1932.

M. L. COUNTRYMAN, Jr.,
Counsel for Northern Pacific Railway Company et al., Appellees.

It is ordered that the Northwest Petroleum Association and Farmers' Union Cooperative Oil Company of Jamestown, North Dakota, interveners herein, be made parties appellant to the appeal papers filed herein by the United States of America and the Interstate Commerce Commission as detailed in the response to notice of summons and severance filed herein by said interveners and that said interveners be made parties appellants herein, this 14th day of September, 1932.

JOHN B. SANBORN,
United States Circuit Judge.
WM. A. CANT,
United States District Judge.
GUNNAR H. NORDBYE,
United States District Judge.

[File indorsement omitted.]

[Clerk's certificate to foregoing transcript omitted in printing.]

In Supreme Court of the United States

Statement of points to be relied upon and designation of parts of the record to be printed

Filed Oct. 25, 1932

I

United States of America and Interstate Commerce Commission, appellants, will rely upon the following points in brief and oral argument before this court on their appeal in the above-entitled cause:

1. The District Court erred in granting and issuing a permanent injunction, annulling, suspending, and enjoining enforcement and operation of the order of the Interstate Commerce Commission.

2. The District Court erred in finding and holding that said commission abused its discretion in denying appellees' petition of February 3, 1932, for reopening and further hearing in the proceeding before the commission.

II

And United States of America and Interstate Commerce Commission, appellants, further state that the entire record in this cause as filed in this court should be printed and is necessary for consideration of the points stated above.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.
JOHN LORD O'BRIAN,
The Assistant to the Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
EDWARD M. REIDY,
Assistant Chief Counsel, Interstate Commerce Commission.

Receipt of a copy of the above statement of points and designation of parts of the record to be printed is hereby acknowledged this 17th day of September, 1932.

M. L. COUNTRYMAN, JR.,
Counsel for Northern Pacific Railway Company et al., Appellees.

404 [File endorsement omitted.]

[Indorsement on cover:] File No. 37167. Minnesota, D. C. U. S. Term No. 470. The United States of America, Interstate Commerce Commission, The Northwest Petroleum Association et al., appellants, vs. Northern Pacific Railway Company et al. Filed October 24, 1932. File No. 37167.

U. S. GOVERNMENT PRINTING OFFICE: 1932

FILE COPY

No. 470

In the Supreme Court of the United States

OCTOBER TERM, 1932

UNITED STATES OF AMERICA ET AL., APPELLANTS

v.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA

STATEMENT OF JURISDICTION

In the Supreme Court of the United States

OCTOBER TERM, 1932

No. 470

UNITED STATES OF AMERICA ET AL., APPELLANTS

v.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA

STATEMENT OF JURISDICTION

In compliance with Rule 12 of the Supreme Court of the United States, appellants submit herewith their statement showing the basis of the jurisdiction of that Court to entertain the appeal in the above-entitled cause:

A

STATUTES

The statutory jurisdiction of the Supreme Court to review by direct appeal the decree here complained of is conferred by Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 208, 219, 220; U. S. C., Title 28, Sec. 41 (28), Secs. 43 to 47);

145422—32

and Section 238 of the Judicial Code, as amended by Act of February 13, 1925 (c. 229, 43 Stat. 936, 938; U. S. C., Title 28, Sec. 345).

B

DATE OF DECREE AND APPLICATION FOR APPEAL

The final decree sought to be reviewed was entered August 1, 1932. The petition for appeal was presented with this statement, on September 14, 1932, and the order allowing the appeal was entered September 14, 1932.

C

NATURE OF THE CASE

This cause was instituted by petition filed by five railroad companies seeking to enjoin an order issued December 1, 1931, by the Interstate Commerce Commission, in which it prescribed rates for the transportation of petroleum and its products from origin points in the southwestern part of the United States to destinations in North Dakota and northwestern Minnesota in the proceeding entitled "No. 17304, *International Oil Company et al.* v. *Abilene & Southern Railway Company et al.*" The specially constituted District Court of three Judges filed an opinion on July 19, 1932, holding that the Commission abused its discretion in denying a petition of the railroads filed February 3, 1932, for reopening and further hearing on the ground that economic conditions had materially changed since the hearings and the record before the Commission

had closed January 15, 1930, so as to make the record on which the order was based unrepresentative of conditions at the time the order issued, and that consequently the order was void, citing *Atchison, Topeka & Santa Fe Ry. Co.* v. *United States*, 284 U. S. 248.

D

CASES SUSTAINING JURISDICTION

The following decisions are believed to sustain the jurisdiction of this Court:

United States v. *Atlanta, Birmingham & Coast Railroad Company*, 282 U. S. 522.

United States v. *Baltimore & Ohio Railroad Company, et al.*, 284 U. S. 195.

Atchison, Topeka & Santa Fe Railway Company, et al v. *United States, et al.*, 284 U. S. 248.

Claiborne-Annapolis Ferry Company v. *United States*, 285 U. S. 382.

Respectfully submitted.

THOS. D. THACHER,
Solicitor General.

JOHN LORD O'BRIAN,
The Assistant to the Attorney General.

ELMER B. COLLINS,
Special Assistant to the Attorney General.

EDWARD M. REIDY,
Assistant Chief Counsel,
Interstate Commerce Commission.

SEPTEMBER, 1932.

U. S. GOVERNMENT PRINTING OFFICE: 1932

FILE COPY

Office Supreme Court, U. S.
FILED
JAN 25 1933
CHARLES ELMORE CROPLEY
CLERK

No. 470

In the Supreme Court of the United States

OCTOBER TERM, 1932

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL., APPELLANTS

v.

THE NORTHERN PACIFIC RAILWAY COMPANY, ET AL., APPELLEES

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA, THIRD DIVISION

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

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In the Supreme Court of the United States

OCTOBER TERM, 1932

No. 470

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al., appellants

v.

THE NORTHERN PACIFIC RAILWAY COMPANY, ET AL., appellees

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA, THIRD DIVISION

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

OPINION BELOW

The opinion of the specially constituted District Court (R. 273) is reported in 60 F. (2d) 302. The decision of the Interstate Commerce Commission (R. 120) is reported in 179 I. C. C. 435.

JURISDICTION

The final decree of the District Court was entered August 5, 1932. (R. 287.) Petition for ap-

peal was filed September 17, 1932, and was allowed September 17, 1932. (R. 297, 298.) The jurisdiction of this court rests on the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 208, 219, 220 (U. S. C. Title 28, Sec. 47), as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938 (U. S. C. Title 28, Sec. 345).

QUESTION PRESENTED

Whether the Commission's order of December 1, 1931, requiring appellees to reduce their rates on petroleum and its products from points of origin in the Midcontinent Oil Field (Texas, Oklahoma, Kansas, and Missouri) to designated destinations in North Dakota and in northwestern Minnesota, is void because of the denial by the Commission of the carriers' petition for rehearing to show changed economic conditions.

STATUTE INVOLVED

The pertinent provisions of the Interstate Commerce Act are set forth in the Appendix, *infra*, pp. 40–43.

STATEMENT

Proceedings Before the Commission

This is an appeal from a final decree of the District Court of Minnesota, Third Division, setting aside the Commission's order of December 1, 1931, entered by it in a proceeding then pending before it entitled Docket 17304, *International Oil Co. et al.* v. *Abilene & S. Ry. Co. et al.* (embracing also

Docket 21737, *Dacotah Oil Co. et al.* v. *T., T. & S. Fe Ry. Co.*), 179 I. C. C. 435 (R. 120), prescribing reduced rates on petroleum and its products from producing points in Missouri, Kansas, Oklahoma, Texas, and Arkansas, to destinations in North Dakota and in Minnesota north and west of the line of the Great Northern Railway from Duluth, Minn., to Pipestone, Minn., designated as northwestern Minnesota (R. 121). The carriers attacked the order on numerous grounds (R. 13–18), all of which, with one exception, were overruled by the District Court (R. 273–287). That Court annulled the order "solely because of the Commission's denial of the petition to reopen on the ground of changed conditions." (R. 295.) To determine whether this holding is correct, a summary of the situation confronting the Commission is necessary.

Large quantities of petroleum and its products are shipped from the Midcontinent Oil field [1] into Western Trunk Line Territory.[2] For rate-making purposes, the Midcontinent field, which contains 345 refineries (R. 2, 25), has been divided into groups, all points within each group usually being accorded the same rates (R. 22). The base group is Group 3, extending across Oklahoma and now

[1] Comprising the States of Missouri, Kansas, Oklahoma, and Texas, and portions of the States of Louisiana and Arkansas. (R. 2.)

[2] Comprising the States of Illinois, Iowa, Nebraska, Wisconsin, Minnesota, North Dakota, and South Dakota. (R. 2.)

embracing all shipping points in that State, except Devol, which is in the extreme southwestern portion of the shipping area. (R. 3, 22.) The rates from the other groups have, for many years, been related to the Group 3 rates. (R. 3, 122.) Questions relating to the reasonableness of the rates from the Midcontinent field, the propriety of the groups, and the relationship of the rates from that field compared with other fields have been before the Commission many times. The first important case in which rates on petroleum and its products between points in the Midcontinent field and Western Trunk Line Territory were considered was *Midcontinent Oil Rates*, decided August 13, 1915, 36 I. C. C. 109. (R. 22–23.) In that case the Commission fixed reasonable rates on those commodities from Kansas and Oklahoma to Kansas City, St. Louis, and various other points. On May 10, 1926, the Commission decided *Midcontinent Oil Rates, 1925*, 112 I. C. C. 421 (R. 19), bringing in issue the lawfulness under sections 1, 2, and 3 of the Act of the rates on petroleum products, in carloads, from points in Missouri, Kansas, Oklahoma, Arkansas, Louisiana, and Texas, to points in Western Trunk Line Territory and in Illinois, Indiana, and the upper peninsula of Michigan (R. 22). Therein, the Commission pointed out that "the primary issue is that of proper origin relationships" (R. 22), and that the interested carriers insisted that because the "origin groups as they existed in 1915 have

been extended beyond reasonable limits " (R. 44), the " present rate adjustment accordingly is badly out of alignment and requires recasting" (R. 44). The Commission said that " it would be difficult to suggest any group arrangement in this territory having a semblance of logic " that would not affect in some way the interested parties. (R. 39.) Concerning the rates to various points, including rates to North Dakota and Minnesota, the destination territory involved herein, the Commission found such rates to be " relatively higher than those to the remainder of western trunk line territory " (R. 43), but held the record open for future consideration of those rates (R. 44). In this decision it was shown that "North Dakota obtains about one-half of its gasoline from the Southwest, because the output of the nearer Montana refineries is not sufficient to supply the demand." (R. 44.) The Commission, by its 1926 order, fixed rates to certain representative destination points (shown in Appendix 5 to the report, R. 74) and admonished the carriers to adjust the rates to other destinations in proper relationship thereto (R. 67).

Before the decision of May 10, 1926, in the *Mid-continent Oil Rates, 1925, case* (R. 19), certain distributors of petroleum products, on July 15, 1925, filed a complaint attacking the reasonableness of the rates on those commodities from Texas, Oklahoma, Kansas, and Missouri, to designated destinations in North Dakota and in northwest-

ern Minnesota, hereinbefore shown to be that part of Minnesota north and west of the line of the Great Northern from Duluth to Pipestone, Minn. (R. 76). This complaint was entitled Docket 17304, *International Oil Company et al.* v. *A. & S. Ry. Co., et al.* (R. 75, footnote; R. 120), and the proceeding was consolidated and heard with other cases (R. 75–76), involving related issues. These consolidated proceedings resulted in the Commission's decision of March 5, 1928, entitled *Mid-continent Oil Rates, 1925,* 139 I. C. C. 605. (R. 75.) In that opinion the Commission discussed the rates involved in this appeal, namely, those from the Midcontinent field to North Dakota and northwestern Minnesota, at pages 613–616 of that report. (R. 83–85.) There the Commission showed that the rates from the Midcontinent field to North Dakota and northwestern Minnesota are published as joint rates and are made by adding to the commodity rates to the border points of Sioux City or Willmar, Granite Falls, Paynesville, or St. Cloud, Minn., full fifth-class rates beyond and deducting from the amounts so obtained 5.5 cents per 100 pounds. (R. 83.) An appendix to that decision shows the rates and earnings from Group 3 to representative destinations, the most typical of which are considered to be Fergus Falls, Morris, and Wadena, Minn., and Fargo, Bismarck, Minot, Devils Lake, and Grand Forks, N. Dak. (R. 87.) The following excerpts from the report, based on evidence

of record, tend to show the unreasonable character of the assailed rates:

Rates on refined oils from Tulsa to 11 points in western trunk-line territory situated on or east of the Missouri River, are shown to average 44 per cent of the fifth-class rates, whereas the rate on refined oils from Tulsa to Fargo, N. Dak., is 59.3 per cent of the fifth-class rate. Complainants compare rates on refined oils from Group 3 to North Dakota and Minnesota with rates on refined oils from Wyoming to Sioux City, St. Paul, and Chicago, and points grouped therewith; also with proportional rates from Wyoming to North Dakota and Minnesota points applicable on shipments to Canada. Competitive influences which have affected the rates from Wyoming have already been mentioned in connection with rates from Wyoming to South Dakota.

Comparisons of record show that the rates on refined oils from Group 3 to points in North Dakota and Minnesota bear a higher percentage relation to the rate on refined oils from Group 3 to the Twin Cities than rates on cement from Ada, Okla., to the same destinations bear to the rate on cement from Ada to the Twin Cities. Rates on refined oil from Group 3 to the North Dakota destinations average 195.1 per cent, and to the Minnesota destinations 155.2 per cent of the old rate of 43 cents to the Twin Cities, whereas the rates on cement to the North Dakota destinations average 168.1 per cent

> and to the Minnesota destinations 138.5 per cent of the rate of 26 cents to the Twin Cities. The basis upon which the rates on cement from Ada appear to have been established was approved in *Lehigh Portland Cement Co.* v. *Director General,* 61 I. C. C. 613. That basis has been changed somewhat by *Lehigh Portland Cement Co.* v. *B. F. & I. F. Ry. Co.,* 132 I. C. C. 3.
>
> Exhibits of record show that while the ton-mile earnings accruing to certain of the North Dakota lines under the rates on a number of selected commodities do not differ materially from the average of the corresponding earnings of 27 western roads, the ton-mile earnings under the rates of the same North Dakota carriers on refined petroleum oil and its products are materially in excess of the average earnings received by the 27 roads on the same commodities. (R. 83–84.)

The carriers in that case strongly urged that no reduction in the rates from the Midcontinent field to North Dakota and Minnesota should be made because the rates from Wyoming and Montana to these States are made with relation to the rates from Group 3 and that any reduction in the rates from Group 3 will necessitate corresponding reductions from Wyoming and Montana. (R. 84.)

The findings of the Commisison, so far as here material, were that the rates assailed were, and for the future would be, unreasonable and unduly prejudicial to the extent they exceeded the rates pre-

scribed in appendices to the report. (R. 85.) The rates prescribed as reasonable were to representative destinations, the carriers being admonished to adjust rates to other destinations in proper relationship thereto. (R. 86.) These rates became effective on June 14, 1928. (R. 110, 112.)

The following table (R. 87) sufficiently illustrates the reductions in rates required by this decision from Group 3 to representative destinations, together with the earnings under the old and new rates:

From Group 3 to—	Distance	Present rate	Ton-mile earnings	Rate prescribed	Ton-mile earnings
	Miles	*Cents*	*Mills*	*Cents*	*Mills*
Morris, Minn	886	58	13.09	54	12.19
Fergus Falls, Minn	981	64	13.05	61	12.44
Wadena, Minn	972	62.5	12.86	62.5	12.86
Fargo, N. Dak	990	70	14.14	62	12.53
Grand Forks, N. Dak	1,068	75.5	14.14	70	13.11
Devils Lake, N. Dak	1,125	83.5	14.84	74	13.16
Minot, N. Dak	1,215	92	15.14	81	13.33
Bismarck, N. Dak	1,260	94.5	15.00	82	13.02

In considering these reductions, the court will bear in mind that they apply to all carriers participating in the haul from origin to destination; only the delivering carriers are, however, contesting the reductions in this case.

Contending that the rates thus becoming effective on June 14, 1928, would result in a shift of tonnage from the Wyoming oil fields to the Midcontinent field, and in an effort, so they alleged, to restore the rate relationship existing prior to the March 5, 1928, decision (R. 113), the carriers, in-

cluding appellees, filed tariffs proposing reduced rates on petroleum and its products from Wyoming points, including Casper, the center of production, to destinations in North and South Dakota, Minnesota, Iowa, Nebraska, and Montana (R. 111). These schedules were suspended, hearings had, and the proposed reduced rates found not justified in I. & S. Docket No. 3148, *Petroleum and its Products from Points in Wyoming,* 153 I. C. C. 363. (R. 111.) The proposed reductions averaged 6½ cents per 100 pounds (R. 112), and were shown by the Commission as very low rates (R. 114.) Significantly, the Commission found that, based upon the present movement from the Wyoming field, the proposed reductions would decrease the freight revenues of the Chicago & North Western alone more than $350,000 per annum. (R. 115.) And the North Western is a party to this case, seeking to annul a Commission order condemning unreasonable and unjustly discriminatory rates on the ground it will suffer irreparable injury if required to stand a rate reduction. (R. 18.) After pointing out that the destination carriers, including appellees, are the same whether the traffic moves from the Midcontinent or from the Wyoming fields (R. 113), and after finding that no shift of tonnage followed the reduction in rates effective June 14, 1928 (R. 114), and that there would be no shift now (R. 115), the Commission's ultimate finding was that the rates proposed were not less than reasonable rates, but,

as they would prefer Wyoming shippers over Midcontinent shippers, they were ordered cancelled. (R. 116).

Following the Commission's decision of March 5, 1928, in *Midcontinent Oil Rates, 1925* (139 I. C. C. 605) (R. 75), which it will be recalled embraced No. 17304, the *International Oil Case,* involved in this appeal, considerable dissatisfaction arose. The complainants in No. 17304 alleged that the Commission's method of prescribing rates to "key-point" destinations, with an admonition to the carriers to adjust rates to other points in proper relationship thereto, was objectionable because the carriers had improperly graded the rates. (R. 124.) In this connection, complainants showed that "although some reductions were made in purported compliance" with the Commission's finding in the earlier report, the "rates to 106 of the 836 destinations here considered were increased." (R. 124.) Considering these and other objections, which are set out in its report (R. 120), the Commission on June 10, 1929, reopened the *International Oil Case,* and consolidated with it a complaint entitled Docket 21737, *Dacotah Oil Company et al.* v. *A., T. & S. Fe Ry. Co. et al.,* involving the unreasonableness of the rates on petroleum from the Midcontinent field to destinations in North Dakota (R. 121). Further hearings were had, which concluded on January 15, 1930 (R. 15), the case was orally argued before the Commission on October 9, 1930, and decided Decem-

ber 1, 1931, 179 I. C. C. 435 (R. 120). The order of December 1, 1931, is the one directly involved in this appeal. (R. 1, 144.)

The accompanying report of December 1, 1931 (R. 120), reviewed briefly the Commission's holdings in the 1915 *Midcontinent Oil Rates* (R. 122), and in the *Midcontinent Case of 1925* (R. 122). Therein the Commission showed how the traffic moved from the Midcontinent origin territory to the territory here involved. On this, it said:

> Kansas City is the gateway for the oil traffic from the Southwest to the destinations here considered. Beyond that point the principal routes which move the bulk of the traffic are through St. Paul; but except to relatively few points in eastern Minnesota, the shortest routes, many of which are open routes, are through Aberdeen or Willmar. To most points in North Dakota west of and including Devils Lake and Jamestown and to some points east thereof the shortest routes are over the Chicago, Milwaukee, St. Paul & Pacific through Sioux City and Aberdeen to Edgeley, N. Dak., where that carrier connects with the Midland Continental, which in turn connects with the Northern Pacific at Jamestown and the Minneapolis, St. Paul & Sault Ste. Marie at Wimbledon, N. Dak. To eastern North Dakota and western Minnesota the shortest routes are generally through Sioux City and over the line of the Great Northern above described through Willmar or the junctions

> with the other northern carriers. The short routes are also the tariff routes to many destinations. (R. 123.)

In that opinion the Commission set out a number of contentions of the shippers as to why the decision in the *Midcontinent Oil Rates Case, 1925,* was unsatisfactory from their standpoint, including the claim that the rates prescribed in that decision (effective June 14, 1928) " were and are unjustifiably high, particularly as compared with the rates prescribed from the same origins to points in South Dakota and to St. Paul, Paynesville, St. Cloud, Willmar, and Granite Falls, Minn., the gateways immediately adjoining the destination territory via which the traffic moves." (R. 123.) It was also pointed out in the report of December 1, 1931, that " the relationship of the origin groups is not attacked and complainants and interveners object to any disturbance of that relationship in this proceeding." (R. 123.) Situations showing lack of proper gradation in the rates were instanced (R. 124), and evidence briefly summarized tending to show the unreasonableness of the rates (R. 124–125). Concerning the shippers' testimony, the report reads:

> Complainants show that the rates assailed yield earnings per car-mile which are in some instances 50 per cent higher than those under the rates to Duluth, Willmar, and St. Paul and that they are also much higher than the rates for comparable distances

from points in midcontinent Group 3, Casper, and other points to destinations in other portions of western trunk-line territory. For example the rate from Group 3 to Wausau, Wis., is 46 cents as compared with a rate of 62 cents prescribed to Fargo and rates of 65 cents to Detroit Lakes, Minn., and 79.5 cents to Linton, N. Dak.

The rates assailed are also compared with rates which would result under various bases of readjustment. Some of these were considered in the former report. Those here submitted are determined generally by the present rate to Willmar or other gateway through which the shortest possible distance is computed, plus the spread in the fifth-class rates under the southwestern or Fargo scale for the distances beyond the gateway, or by applying to the southwestern scale of class rates the average percentage relationship which the rates prescribed in the original report to 17 cities on and east of the Missouri River and south of the destination territory here considered bear to the same class rates. Aside from the fact that refined oils are rated fifth class in western classification and that rates to the destination territory were formerly made by combination, using the full fifth-class local rates as factors beyond the gateways, the use of the spreads in the fifth-class rates has little support of record. (R. 124–125.)

The carriers' testimony in defense of their rates was then set out (R. 125–126), and the following

excerpt from the report shows the wide range the evidence took:

> Complainants and defendants introduced exhibits showing relative traffic density and other statistical data bearing upon transportation conditions in the territory between Kansas City and St. Paul through which the traffic generally moves, in the destination territory here considered, and in South Dakota. Complainants contend that their comparisons fully sustain the reasonableness of the rates which they seek, both for the future and for the past, and that they justify a level of rates in western North Dakota no higher than in the eastern portion of that State. Defendants stress the operating difficulties encountered by the northern lines during the winter months and the character of the service which they render in the distribution of the traffic. In the latter connection the Northern Pacific shows that of 2,465 cars delivered by it in the first eight months of 1929, 45 per cent were destined to branch-line points. On the other hand, by far the heaviest movement takes place in the summer and early fall months, and the lines performing the service to the Twin Cities handle the traffic in train loads to that point. (R. 126.)

Following this, under the heading "Rates for the Future," the Commission said:

> The record on further hearing demonstrates the necessity of a further revision of the rates assailed to bring about a reasonable

> and consistent adjustment. The present rates grade up too rapidly beyond the gateways on the eastern border of the destination territory and as the State line is crossed from South Dakota into North Dakota; the key-point rates have frequently been blanketed back for long distances, resulting in abrupt jumps in the rates between adjoining stations; there are numerous fourth-section departures and other inconsistencies such as higher rates to Jamestown and Bismarck than to Devils Lake and Minot, N. Dak.; the rates to North Dakota especially are on too high a level compared with the rates prescribed to South Dakota; and those from Kansas City to North Dakota are generally higher than the Wyoming-Montana scale recently prescribed in *Rates on Petroleum and its Products in Montana*, 176 I. C. C. 707. (R. 126.)

The report shows that, because of the effect on the carriers' revenues, and for other reasons therein detailed, the Commission concluded it would not be warranted in requiring an extension of the level of the rates at the gateways (Sioux City, Sioux Falls, and St. Paul) throughout this destination territory. (R. 127.) On this point the report reads:

> The record indicates that the rates to the gateways were made with relation to those to points farther east such as Chicago, Ill., which are affected by competitive conditions which do not exist in the destination territory under consideration. Under these cir-

> cumstances and considering the effect on carriers' revenues, we would not be warranted in requiring an extension of the level of rates at the gateways throughout this destination territory. Moreover, it is apparent that the application of any uniform percentage of class rates to this traffic would have one or more of the following results: (1) Increases in the rates to the gateways and points east thereof which were prescribed in the Mid-continent case of 1925 and are not here in issue; (2) a very abrupt rise in the rates to points immediately beyond the gateways; and (3) drastic reductions to points not only throughout this destination territory but also in South Dakota and perhaps Nebraska. (R. 127.)

In finding that the situation called for prescription by it of specific rates to 836 destinations involved and in showing how these rates harmonize with rates prescribed by it in other territory, the Commission said:

> We are forced to the conclusion that the situation requires the prescription of specific rates without any special relation to the class rates. Appendix B hereto shows the rates from Group 3 to the 836 destinations involved, the distances over the shortest workable routes as shown in complainants' exhibits, the first-class rates for like distances under the southwestern scale, and the percentage relation of the petroleum rates to such class rates. The southwestern scale is

used simply as a convenient yardstick and not on the assumption that it would be proper for application to all points in the destination territory. This appendix also shows the rates proposed by the examiner and those herein prescribed for the future. It will be observed that the latter are graded upward from the gateways and gradually become a larger percentage of the first-class rates under the southwestern scale. The proposed rate from Group 3 to Fargo is 22.5 per cent, which is the same as the average under the rates prescribed to points in eastern South Dakota; that proposed to Jamestown, 980 miles, is 25 per cent and the same as that previously prescribed to Mobridge, S. Dak., 974 miles; and that proposed to Bismarck, 1,055 miles, is 26.5 per cent and the same as that previously prescribed to Lemmon, S. Dak., 1,073 miles. These rates will not only be in harmony with those previously prescribed to South Dakota, but considering the respective territories through which the traffic moves, also in line with those recently prescribed from Wyoming points to Montana points in *Rates on Petroleum and its Products in Montana, supra.*

In prescribing these rates we have taken into consideration the shortest possible routes, including that through Ellendale and Edgeley, N. Dak., as well as the routes over which the bulk of the traffic moves via the Twin Cities. The adjustment is intended to eliminate fourth-section departures over all

reasonable and customary routes, but if fourth-section relief is necessary applications therefor will be given consideration on their merits. (R. 127–128.)

The following table, using the same destinations as considered representative heretofore, shows the reductions resulting from the Commission's order herein:

From Group 3 to—	Short-route distance	Present rate	Rate prescribed	Reduction
	Miles	*Cents*	*Cents*	*Cents*
Morris, Minn.	886	54	50	4
Fergus Falls, Minn.	968	61	55	6
Wadena, Minn.	961	62.5	55	7.5
Fargo, N. Dak.	990	62	57	5
Grand Forks, N. Dak.	1,068	70	63	7
Devils Lake, N. Dak.	1,118	74	70	4
Minot, N. Dak.	1,141	81	75	6
Bismarck, N. Dak.	1,055	82	70	12

It should be borne in mind that these reductions apply to the originating, intermediate, and delivering carriers "according as they participate in the transportation." (R. 145.) Presumably the originating and intermediate lines are satisfied with the order, as the suit below was brought by delivering carriers only. (R. 2.)

Generally speaking, the Commission denied reparation, save in "certain instances * * * where the carriers failed to comply with our instruction to revise the rates to other points in proper relationship with those prescribed to the key points." (R. 128.) The Commission's reason for denying reparation is stated as follows:

> * * * We have repeatedly held that as applied to past shipments the rates in effect prior to the readjustment of June 14, 1928, were not unreasonable to the extent they exceeded the rates established on that date pursuant to the Midcontinent case of 1925. See cases cited in *Legel Oil & Gas Co.* v. *Chicago & N. W. Ry. Co.*, 161 I. C. C. 599.
>
> The rates prescribed in our former report must be regarded as reasonable maxima from the time of their establishment to the effective date of the order to be issued in connection with this report. (R. 128.)

The report points out that the carriers "blanketed the key-point rates back so as to create larger destination groups than under the adjustment herein prescribed for the future, but it can not be said that the rates so established are clearly contrary to our previous findings except in the instances hereinbefore mentioned and indicated in column H of Appendix B." (R. 129.) The denial of reparation was sharply denounced by the shippers. (R. 233.) The ultimate finding of the Commission was:

> Upon the whole record now before us, we find that the rates assailed prior to June 14, 1928, were not unreasonable; that those applicable on and after that date until the effective date of our present order for the future were unreasonable only in the instances and to the extent they exceeded the rates shown from Group 3 in column H of Appendix B hereto, plus or minus the differentials from

> other origin groups applicable to Willmar and St. Paul, Minn.; and that on and after the effective date of our order for the future, the rates assailed will be unreasonable to the extent they exceed or may exceed those shown from Group 3 in column F of Appendix B, plus or minus said differentials from the other origin groups. Our previous findings are modified accordingly. (R. 129.)

By an order of the same date, December 1, 1931, the Commission required the reduced rates to, and they did, become effective March 15, 1932. (R. 145.) No review of this action was sought at the time, and it was not until February 3, 1932, that the appellees petitioned the Commission to reopen the case for further hearing on the ground that the order to become effective on March 15, 1932, was not representative of present conditions because based upon a record closed January 15, 1930. (R. 146.) In the meantime, this Court had rendered a decision, on January 4, 1932, in the case of *A., T. & S. Fe Ry. Co.* v. *United States,* 284 U. S. 248, annulling the Commission's order of July 1, 1930, in Docket 17000, Part VII, *Grain and Grain Products,* 164 I. C. C. 619, on the ground that the Commission had abused its administrative discretion in denying the carriers' petition for rehearing to show changed conditions between September, 1928, when the record before the Commission closed, and the date when the order was to become effective, April 1, 1931. The lower court said, speaking of the de-

cision in the *Grain Case* that "it is probably true that that decision induced them [the carriers] to file their application for a rehearing." (R. 286.) In the carriers' petition for rehearing it was averred that the Commission's order of December 1, 1931, would involve a revenue loss of $284,000 for appellees, and $600,000 for all carriers (R. 149); further, that such reductions in rates would precipitate demands for other reductions (R. 149). The carriers also pointed out that, despite the existing depression, they were transporting to destinations involved in the proceeding more carloads of refined petroleum traffic since the record was closed than theretofore. (R. 148–149.) On March 7, 1932, the Commission entered an order denying the carriers' petition to reopen (R. 17), and the rates went into effect on March 15, 1932 (R. 144).

Proceedings in the District Court

The petition seeking annulment of the Commission's order of December 1, 1931, was filed on April 1, 1932, by five carriers, the Northern Pacific, the Great Northern, the Milwaukee, the Chicago & North Western and the Soo Line. (R. 1, 2.) These are all delivering carriers; none of the originating or intermediate carrier defendants in the Commission proceedings, although quite numerous (R. 104), have joined in the suit. Undoubtedly, pipe-line competition played some part in this failure to join, as it was shown that pipe lines are now in operation from the Midcontinent field to Min-

nesota Transfer, Minn. (R. 245), and that the delivering carriers, appellees herein, would share in the traffic whether coming to the destination territory by rail or by pipe line (R. 245).

The petition alleged that the order was void on many grounds, which may be summarized as follows: (1) It has the effect of reducing rates previously declared reasonable by the Commission, not because such rates were unreasonable in and of themselves and based upon the service rendered, but to bring about harmonious relationships between such rates and rates not in issue to other destinations (R. 13); (2) the order is void because the Commission, in prescribing the reduced rates to North Dakota and northwestern Minnesota, to bring about "a reasonable and consistent adjustment," considered only the relationship of those rates not in issue from the Midcontinent field to South Dakota and to the gateways on the eastern border of the destination territory, and arbitrarily refused to consider the relationships between the rates in issue and the comparative rates from Casper, Wyo., on the ground that these relationships had not been brought into the case by complainants (R. 13–14); (3) the Commission went outside the record because it considered certain comparisons between the rates in issue here and rates prescribed by it on petroleum from Wyoming to Montana points in another proceeding after the record in this case was closed (R. 14–15); (4) in its conduct of the proceedings, the Commission acted

arbitrarily because it denied various petitions made by the carriers for consolidation and further hearing upon a single record of cases relating to the general level of the rates from the Midcontinent field to numerous destinations in Western Trunk Line Territory, other than the destination territory involved herein (R. 10–11); and (5), the order is void in that the Commission erred as a matter of law in denying, on March 7, 1932, the carrier's petition for rehearing of February 3, 1932, to show changed economic conditions (R. 18). The petition contained no allegations that the rates prescribed by the Commission were confiscatory, or that its order finding the existing rates unreasonable, was not supported by the evidence.

The petition concluded with an allegation of revenue losses of $600,000 annually to appellees and their connections (R. 18), $305,000 of which would be taken from appellees and the balance from their connections (R. 18). This allegation was denied by the Commission (R. 154) and by the Government (R. 252). Interventions in support of the order were allowed on behalf of the Northwest Petroleum Association (R. 253) and the Farmers Union Cooperative Oil Company (R. 255). Attached to the Commission's answer and made a part thereof are its two decisions in *The Fifteen Per Cent Case, 1931*, 178 I. C. C. 539 (R. 155); 179 I. C. C. 215 (R. 204); in the second of which, decided December 5, 1931, it authorized certain increases in rates, to ex-

pire March 31, 1933, including an increase of one cent per 100 pounds on crude petroleum, petroleum products n. o. s., and petroleum oils, refined, and all other gasoline (R. 228). Based on a car of petroleum weighing 52,800 pounds (R. 32), this emergency increase amounts to $5.28 per car. In aid of its application for an interlocutory injunction, appellees introduced affidavits of revenue losses totaling $365,000 for their lines. (R. 256–263.) In the District Court, interveners in support of the order introduced affidavits, the effect of which was to show that the farmer received the benefit of the lower rates, and that at that time [April, 932], his condition was such as not to permit the payment of the higher rates. (R. 267, 271.) An exhibit, attached to one of these affidavits, showed the financial condition of seven Western Trunk Line railroads, including the five appellees herein, for the nine years 1921 to 1929, inclusive. (R. 269.) All parties submitted the case on final hearing, and on July 19, 1932, the Court held the order invalid solely on the ground that the Commission erred as a matter of law in denying the carriers' petition for reopening to show changed economic conditions. (R. 286.) All other contentions as to invalidity of the order were overruled (R. 273–284), and the only question presented by appellants' assignment of errors is as to whether it was essential to due process of law, under the facts in this case, for the Commission to

have afforded the carriers an opportunity to show changes in economic conditions taking place between the date the record closed, January 15, 1930, and the effective date of the order, March 15, 1932 (R. 298). The appeal, it is believed, is properly here, all defendants and interveners below having joined therein (R. 303), and on November 14, 1932, this court noted probable jurisdiction. No stay pending the appeal was sought and the rates required by the order of December 1, 1931, are not now in effect because of the final decree. (R. 287.)

ASSIGNMENT OF ERRORS TO BE URGED

The following errors of the District Court are urged herein:

1. In setting aside, annulling, and suspending the order of the Interstate Commerce Commission, entered December 1, 1931, in Docket No. 17304, *International Oil Company* v. *Abilene & Southern Railway Company et al.*, 179 I. C. C. 435, and in granting and issuing a permanent injunction enjoining the enforcement, execution, and operation of said order.

2. In finding and holding that the Commission abused its discretion in denying the petition for rehearing filed February 3, 1932. (R. 298.)

SUMMARY OF THE ARGUMENT

The facts in this case are entirely different from the facts considered by this court in the case of *Atchison, Topeka & Santa Fe Ry. Co.* v. *United*

States, 284 U. S. 248, referred to herein as the *Grain case.* In that case this Court was not laying down a principle of law to be followed in all cases irrespective of the differences in circumstances and conditions; instead it was dealing with the particular facts in a specific situation.

There was no necessity for the Commission to grant a rehearing to show changed conditions occurring since the closing of the record, because at the time of its decision under review it had just concluded a nation-wide investigation into the condition of the carriers caused by the depression, as a result of which it had permitted increases for a limited period in certain selected commodities. (*Fifteen Per Cent Case, 1931* (R. 155, 204).)

ARGUMENT

The Commission did not err in denying the carriers' petition for rehearing filed February 3, 1932

The District Court concluded that the Commission's order was void because of this Court's decision in *Atchison, Topeka & Santa Fe Ry. Co.* v. *United States,* 284 U. S. 248, and this, despite the Court's finding that "the facts in this case and in that case are different." (R. 285.)

The carriers' petition for rehearing was filed on February 3, 1932, and is based primarily on the claim that conditions have changed since the further hearing, which closed January 15, 1930. (R. 146.) These changed conditions are claimed to be loss of traffic and revenues resulting from the eco-

nomic depression, beginning in the fall of 1929, and continuing, with steadily increasing severity, ever since. (R. 148.) The contention was made that the full effects of the depression had not become evident at the time of the further hearing (R. 148), and figures are given (R. 147–148) showing loss of traffic and revenue for 10 carriers serving Western trunk-line territory, including several weaker than appelles. Five only of these 10 carriers joined in this suit. Petitioners below made no claim that they are any worse off than other railroads throughout the country, or that they are suffering from the depression any more than industry in general, and the petroleum business in particular.

We contend that in the *Grain Rates Case*, 284 U. S. 248, this court was dealing with a specific case under facts essentially different from the facts here. The *Grain case* arose out of the Hoch-Smith Resolution (*Ann Arbor R. R.* v. *United States*, 281 U. S. 658) a "general investigation," and related to "rates on a major description of the traffic of the carriers in a vast territory" (p. 260). Practically all the carriers in the territory west of the Mississippi River, and including Illinois, and many carriers east thereof, joined in the suit to annul the order. The revenues of the carriers in the Western District from the carriage of grain and grain products amounted to 12.1 per cent of their total revenues, and the order in the *Grain case* had the effect of reducing the general level of rates on that traffic

13 per cent, or about $20,000,000, annually (p. 258). Under these circumstances, this Court held that a record closed in September, 1928, could not be regarded as representative of conditions existing in 1931, and that the Commission's action in refusing to grant a rehearing permitting the presentation of evidence relating to existing conditions, was a denial of right. In the opinion it was stated:

> * * * While the effects of the widespread economic disturbance have had a progressive manifestation, they had been sufficiently revealed in February, 1931, when the second petition for rehearing was made, to compel the conclusion that the record of 1928 afforded no sufficient basis for the order of the Commission. The facts were set forth in the carriers' petition. * * *. (*Id.* 261.)

On the other hand, the record in this case was closed January 15, 1930, after the depression began, and while it is undoubtedly true that at that time its full effects had not become evident, it is also true that the case was not finally submitted until the argument before the Commission on October 9, 1930. (R. 120.) Shortly thereafter, all the carriers in the United States filed an emergency application for a 15 per cent increase in freight rates, and because of its urgency, the application was given preferred consideration by the Commission. This occupied much of the summer and fall of 1931. (R. 155.) (See *Fifteen Per Cent Case, 1931,* 178

I. C. C. 539 (R. 155); 179 I. C. C. 215 (R. 204).) Considering this, can the court say it was an unusual length of time, in view of the many interrelated issues and varying relationships that had to be passed upon, for the Commission to take until December 1, 1931, to render its decision herein. However that may be, at no time between January 15, 1930, when the hearings closed, and December 1, 1931, the date of the decision (a period of almost two years), did the significance of changed conditions become apparent to appellees. Presumably, it was willing to take its chances upon a favorable Commission decision; failing that, the decision in the *Grain Rates case,* decided on January 4, 1932, advanced a new reason as to how the Commission's action might be defeated, for on February 3, 1932, a petition for rehearing, alleging changed conditions, was filed. (R. 17.)

Other facts distinguish this proceeding and the *Grain case.* This is not a general investigation pursuant to the Hoch-Smith Resolution, but a complaint and answer case involving the rates on a single commodity, petroleum and its products, moving in part only over the lines of appellees, and covering only a relatively small part of the destination territory served by them. The revenue differences are substantial, a $20,000,000 reduction was involved in the *Grain case,* and estimates of $305,000 as to appellees (R. 18), and $600,000 for appellees and other participating carriers not join-

ing in the suit, are involved here (R. 18). While in this connection the lower court appealingly suggests that it is logically impossible to see why the number of carriers, the extent of territory, the amount of carrier revenue affected, can furnish the solution to the question of whether the order was fair or unfair (R. 285), and that "a single carrier with a few miles of road, operating in a limited territory, is as much entitled to a fair hearing and fair treatment at the hands of the commission as a large group of carriers operating in any vast territory, and the law will certainly afford it the same protection" (R. 285), we do not believe that in its decision in the *Grain case,* this court was laying down a general principle of law to be followed regardless of the facts in the case. Furthermore, the amount of the revenue affected, whether $600,000 or $20,000,000, may make a very material difference as to whether an order is valid or invalid, when we consider the duty imposed upon the Commission by Section 15a (2) to adjust rates "so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient, and economical management" earn, as nearly as may be, a fair return. We do not think that this court expected the Commission to reopen every case heard either in whole or in part before the full effects of the depression became evident. The Commission believed that a discretion was left in it as to what

cases should be reopened for the purpose of bringing the records down to date. In its 46th Annual Report to the Congress, dated December 1, 1932, the Commission reviewed the investigations undertaken by it in Docket 17000, *Rate Structure Investigation,* out of which its decision in the *Grain Rates Case* arose, and pointed out in that report (p. 30) that—

> * * * It has also been necessary, on account of changed conditions, to reopen certain of the proceedings to bring the records down to date.

Also, it would seem that had appellees really been desirous of calling the Commission's attention to changed conditions as affecting them, they could have done so sometime during the period from the date the record closed, January 15, 1930, and the date of the decision, December 1, 1931. It will not be contended that prior to the last-mentioned date the serious effects of the depression had not become apparent. As this court said in the *Grain case* (p. 261): "While the effects of the widespread economic disturbance have had a progressive manifestation, they had been sufficiently revealed in February, 1931, * * * to compel the conclusion that the record of 1928 afforded no sufficient basis for the order of the Commission." Then it is believed that the present case is "an ordinary application for rehearing" as cited by the court in its decision in the *Grain case* (p. 261). The distinguishing facts have been heretofore shown. It

is at least of significance that the carriers who participate in the traffic up to the gateway points where it is delivered to appellees, though their revenues are also affected, have not joined in the suit. For aught that appears, they must be considered to be satisfied with the rates. These originating and intermediate lines appreciate that with a pipe line now opened to Minnesota Transfer (R. 245), that fact has a part to play in fixing their rates. Appellees, on the other hand, are delivering lines who share in the traffic whether coming to their gateways by rail or pipe line.

Despite what we consider the distinction between the *Grain case* and this proceeding, was it, under the facts shown herein, necessary at all for the Commission to grant a rehearing to show changed conditions? The proceeding under review was decided on December 1, 1931, shortly after the Commission's first decision in the *Fifteen Per Cent Case,* October 16, 1931 (R. 155), and almost simultaneously with its supplemental report of December 5, 1931 (R. 204). An examination of the two reports therein (R. 155; R. 204) will show that the Commission was fully advised in regard to the condition of the carriers. Excerpts from these reports showing that the Commission was aware of changed conditions are contained in Paragraphs XXI and XXII of the petition (R. 15–16); in fact the petition itself states that the Commission acted with knowledge of, but in disregard of, the changed conditions aforesaid (R. 16); it is then alleged, in

Paragraph XXIII, that on February 3, 1932, the carriers filed an application for rehearing to show changed conditions, and that "the Commission had recognized said changed conditions in its report" in *Fifteen Per Cent Case, 1931* (R. 17). Under these facts, can it be said that there was any abuse of discretion on the part of the Commission in denying a petition for rehearing to show changed conditions of which the petition itself shows the Commission had knowledge? Because of the carriers' serious financial condition at that time, the Commission granted emergency rates on certain commodities best able to stand such increases, which could be exacted without at the same time transgressing the bounds of maximum reasonable rates. (R. 205.) In the *Fifteen Per Cent Case, 1931* (R. 204), the Commission permitted increases of 1 cent per 100 pounds on crude petroleum, refined petroleum oils, gasolines, etc. (R. 228). These increases are to expire March 31, 1933, in the absence of action duly taken by the Commission to the contrary. (R. 205.) These surcharges must be added to the rates prescribed by the order of December 1, 1931 (to become effective March 15, 1932).

In its findings of fact (R. 288–295) the lower court found from an affidavit introduced on behalf of the Northern Pacific Railway Company, in support of the petition, that the total revenues of the Northern Pacific declined from $77,000,000 in 1929, to $65,000,000 in 1930, and to $51,000,000 in 1931 (R. 294). This is a reduction of $26,000,000 in a

two-year period. We have no desire to question these figures, for, as the lower court found: "The general effect of the change in economic conditions upon the revenues of these and other carriers is a matter of common knowledge." (R. 294.) We do say, however, that in view of this drastic reduction in revenues, the Northern Pacific, which may be considered representative of other appellees, must look elsewhere for its salvation than the mere setting aside of this order, the revenue effects of which amount to a reduction to it of "more than $98,000.00 per annum" (R. 257) according to one affiant, and $136,000 per annum (R. 260), according to another.

Recognizing the emergency, the Commission to the best of its ability and in so far as it could lawfully do so, attempted to better the condition of the carriers by granting them permission to make general increases in the rates on selected commodities, which increases it believed could be made "without bringing about an undue disturbance in business conditions or transgressing the bounds of maximum reasonable rates." (R. 205.)

This court has recognized the practical necessity of dealing with rates in the aggregate or by broad classes, protecting the rights of shippers and carriers with respect to individual rates by a saving clause which makes the general findings without prejudice to subsequent findings in individual situations. (*New England Divisions Case*, 261 U. S. 184, 197–198; *Railroad Commission of Wis-*

consin v. *C. B. & Q. R. R. Co.*, 257 U. S. 563, 579. Compare *Brimstone R. R. Co.* v. *United States*, 276 U. S. 104, 123.)

It is to be remembered that the reduced rates prescribed by the December 1, 1931, order have been enjoined, but the surcharges permitted by the Commission as a result of its comprehensive investigation in the *Fifteen Per Cent Case, 1931* (R. 155, R. 204) are being added to the theretofore existing higher rates. (Compare *Anchor Coal Co.* v. *United States*, 279 U. S. 812.) We submit that, while the Commission can not go to one record for facts in deciding another case (*United States* v. *Abilene & So. Ry. Co.*, 265 U. S. 274), it was never intended that the Commission should shut its eyes to conclusions reached by it in other cases, especially where, as here, the decisions are virtually contemporaneous.

Whether a petition for rehearing should be granted or denied does not depend on the evidence upon which the order sought to be set aside is based; it depends instead upon matters called to the Commission's attention by documents in the nature of affidavits, which relate to "outstanding contemporary facts." It is not based on evidence properly so-called; it enters rather into the realm of judicial notice. Of necessity, it is a matter discretionary in character. This discretion must be exercised by the Commission considering, weighing, and balancing the evidence introduced in the *Interna-*

tional Oil Case, against the general facts of which it may take judicial notice, including of course the facts and knowledge acquired by it from its investigation in the *Fifteen Per Cent Case.* The result of this weighing is the order granting or denying the petition for rehearing. It is believed these facts clearly differentiate the situation from that before this court in the *Grain case.*

In the carriers' petition for rehearing (R. 146–150), the denial of which has been found sufficient to invalidate the order (R. 295), figures are given showing that, unlike other traffic during the existing depression, the refined petroleum products traffic of appellees has increased; in 1931, the Great Northern delivered 19,408 cars of refined petroleum products at stations on its lines in Minnesota and North Dakota, as compared with 19,115 cars during the year 1930, and only 17,035 cars during the year 1929 (R. 148). It is there also shown that during the year 1930, the Northern Pacific delivered 6,147 cars of refined petroleum products moving from the midcontinent fields to stations on its lines in Minnesota and North Dakota, as compared with 5,328 cars during the year 1929 (R. 148); during the first seven months of 1931 the Northern Pacific delivered 3,800 cars of refined petroleum products moving from the midcontinent fields to these stations as compared with 3,523 during a corresponding period of 1930 (R. 148). The petition for rehearing further stated: "It is believed that a similar situa-

tion exists in the portions of the destination territory served by the Soo Line and Milwaukee Railroads, but the exact figures for these lines are not yet available." (R. 148–149.)

This shows that despite the unfavorable effect on carrier revenues by the decline of traffic generally, as far as petroleum and its products go, which are the commodities we are concerned with in this case, the traffic thereon has actually increased.

The present unfortunate plight of the railroads, under these circumstances, does not seem to be due to any falling off in the petroleum traffic but to the decline of traffic generally. The argument seems to be that because the petroleum traffic has not fallen off, but has on the contrary increased somewhat, the industry can well afford higher rates. In *Southern Pacific Co.* v. *Interstate Commerce Commission,* 219 U. S. 433, this court held that while every shipper was entitled to a reasonable rate, the Commission could not reduce existing rates in order to protect the investment of the shipper or by reason of his supposed necessities. The same reasoning would seem to require a holding that the carriers may not insist on the maintenance of rates found to be unreasonable for the future by the Commission (R. 129), which finding upon the record as made was in no way modified by the lower court, in order to protect the investment of the carriers. We have already shown that

the Commission, as a matter of practical necessity, undertakes to deal with the general revenue needs of the carriers by passing on their rates in the aggregate or in broad classes, without considering the reasonableness of particular rates. In the *Fifteen Per Cent Case, 1931,* that was the method pursued by the Commission of affording relief to the carriers to the extent that such relief could be legally granted.

CONCLUSION

It is respectfully submitted that the decree of the court below should be reversed with directions to dismiss the petition for want of equity.

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JANUARY, 1933.

APPENDIX

The following provisions of the Interstate Commerce Act, as amended, are pertinent in this case:

Section 1 (5):

> All charges made for any service rendered or to be rendered in the transportation of passengers or property or in the transmission of intelligence by wire or wireless as aforesaid, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful. * * *.

Section 3 (1):

> That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Section 15 (1):

> That whenever, after full hearing, upon a complaint made as provided in section 13 of this Act, or after full hearing under an order for investigation and hearing made by the

Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this Act for the transportation of persons or property or for the transmission of messages as defined in the first section of this Act, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this Act, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation or transmission other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt

the classification and shall conform to and observe the regulation or practice so prescribed.

Section 15a (2) and (3):

(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: *Provided,* That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country.

(3) The Commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon, and such percentage shall be uniform for all rate groups or territories which may be designated by the Commission. In making such determination it shall give due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation. * * *

Section 16 (a):

That after a decision, order, or requirement has been made by the Commission in any proceeding any party thereto may at any time make application for rehearing of the same, or any matter determined therein, and it shall be lawful for the Commission in its discretion to grant such a rehearing if sufficient reason therefor be made to appear. Applications for rehearing shall be governed by such general rules as the Commission may establish. No such application shall excuse any carrier from complying with or obeying any decision, order, or requirement of the Comission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission. In case a rehearing is granted the proceedings thereupon shall conform as nearly as may be to the proceedings in an original hearing, except as the Commission may otherwise direct; and if, in its judgment, after such rehearing and the consideration of all facts, including those arising since the former hearing, it shall appear that the original decision, order, or requirement is in any respect unjust or unwarranted, the Commission may reverse, change, or modify the same accordingly. Any decision, order, or requirement made after such rehearing, reversing, changing, or modifying the original determination shall be subject to the same provisions as an original order.

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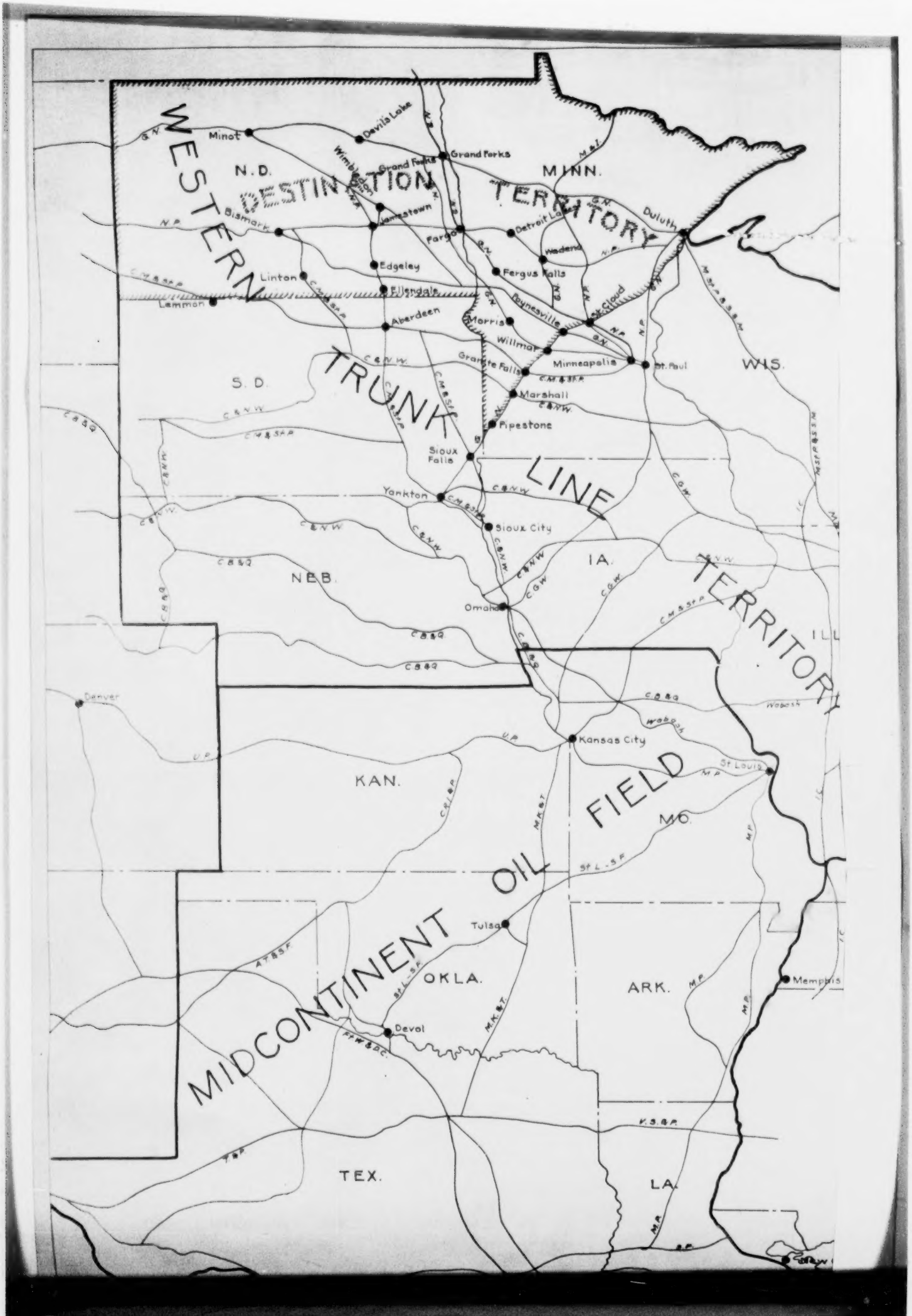
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No. 470

IN THE

Supreme Court of the United States

OCTOBER TERM, 1932

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, THE NORTHWEST PETROLEUM ASSOCIATION, ET AL, *Appellants*,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, ET AL.

Appeal from the District Court of the United States for the District of Minnesota.

BRIEF FOR THE NORTHWEST PETROLEUM ASSOCIATION AND OTHER INTERVENERS AGAINST THE INJUNCTIVE RELIEF SOUGHT

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BEE J. W. STOWELL PRINTING COMPANY, FREDERALSBURG, MD.

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vs.

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Appeal from the District Court of the United States for the District of Minnesota.

BRIEF FOR THE NORTHWEST PETROLEUM ASSOCIATION AND OTHER INTERVENERS AGAINST THE INJUNCTIVE RELIEF SOUGHT

STATEMENT

This brief is presented on behalf of the scores of small independent oil jobbers in western Minnesota and throughout North Dakota who as complainants before the Interstate Commerce Commission have been endeavoring since 1925 to secure a reasonable level of freight rates on their shipments of petroleum products from the Midcontinent field in Kansas, Oklahoma and Texas.

This is a suit under the provisions of the Urgent Deficiencies Act (38 Stat. 219) by only five railroads out of the scores of railroads that were defendants before the Commission, to enjoin and set aside the order of the Commission dated December 1, 1931, entered in the proceeding before it filed by these interveners designated as Docket No. 17304, *International Oil Company, et al v. Abilene & Southern Ry. Co., et al,* ordering reductions in the rates on petroleum products from the Midcontinent oil field to destinations in western Minnesota and North Dakota which were assailed in that proceeding as unjust and unreasonable in violation of Section 1 of the Interstate Commerce Act (49 U. S. C. A. Section 1). Two reports have been made and published by the Commission in the proceeding cited. See: 139 I. C. C. 605; 179 I. C. C. 435, reproduced of record at pages 75 and 120 respectively of the printed Transcript.

The three judge Court provided for by the statute was convened at St. Paul, Minnesota, April 10, 1932 to pass upon the petitioners' application for an interlocutory injunction. At that time the interveners filing this brief presented their petitions to intervene in accordance with the provisions of Section 212 of the Judicial Code (28 U. S. C. A. Section 41, page 650) and by orders then entered by the Court, were made parties hereto. (253-255)*

At the conclusion of the hearing it was stipulated between counsel for the parties that the case would be submitted as on final hearing, counsel for petitioners having stated that no evidence would be introduced in their behalf on final hearing. The evidence of record upon which the Commission rendered its decision leading to the order in question was not introduced before the Court. (277)

*The figures in parentheses, unless otherwise indicated, refer to the pagination of the Transcript of Record.

The petition alleges three grounds upon which the injunction is sought, to wit:

1. That the rates prescribed by the order of December 1, 1931 as shown upon the face of the Commission's report, are without evidence of record to justify them as "intrinsically" reasonable as distinguished from "relatively" reasonable.

2. That in refusing to consolidate the case in question with cases involving rates from Wyoming as petitioned by these carriers, the Commission acted so arbitrarily as to deny petitioners a fair hearing on the question of the intrinsic unreasonableness or reasonableness of the rates under attack from the Midcontinent field.

3. That in view of the rule announced by this Court in *A. T. & S. F. Ry. Co. v. U. S.*, 284 U. S. 248, *(The Grain Case)* because of changed economic conditions (diminishing carrier revenues and earnings) which had taken place since the record before the Commission was closed on January 15, 1930 relied upon in their petition to rehear filed with the Commission, these petitioners were entitled as a matter of right to such rehearing and the denial thereof by the Commission was tantamount to a denial of a full hearing as provided in the Interstate Commerce Act and deprived them of their property unconstitutionally. (1-19)

The Court refused the injunction on grounds 1 and 2 but granted it on ground 3. The Court's opinion reported at 60 F. (2d) 302, will be found at pages 273-287 of the printed Transcript.

On August 5, 1932, the Court below made its findings of fact and conclusions of law and pursuant thereto entered its final decree perpetually enjoining the Commission's said order of December 1, 1931. (287-295) Thereupon by tariffs duly filed with the Commission, the reduced rates which became effective March 15, 1932 under the order of December 1, 1931, were cancelled and the higher basis theretofore in effect was restored effective September 23, 1932.

The interveners filing this brief, by order of the Court below of September 14, 1932, were permitted to adopt as their own the appeal papers filed herein by the United States and were made parties appellant to the appeal herein which was granted September 17, 1932 pursuant to petition therefor and assignments of error duly filed with the Court. (297-304)

POINTS RELIED ON UPON THIS APPEAL

I

The District Court erred in granting and issuing a permanent injunction, annulling, suspending, and enjoining enforcement and operations of the order of the Interstate Commerce Commission.

II

The District Court erred in finding and holding that the Commission abused its discretion in denying appellees' petition of February 3, 1932, for reopening and further hearing in the proceeding before the Commission. (304)

SYNOPSIS OF THE ARGUMENT

The Argument in support of the Points relied upon on this appeal, will be presented under the following headings:

I

The Commission, in denying the petition to rehear filed by the four Railroads, did not abuse the discretion vested in it to allow or deny rehearings because the new evidence which was thereby sought to be offered was immaterial.

II

The interpretation placed by the District Court upon the decision of this Court in *A. T. & S. F. Ry. Co. v. U. S.* 284 U. S. 248 and the application of the holding therein made by said Court in this case amounts to a preemption by the Courts of the field of rate making which under the Constitution is vested solely in Congress.

III

In the light of all of the circumstances by which its action was necessarily governed, it can not rightly be held in denying the petition to rehear in question, the Commission denied these Petitioners a full hearing on the alleged changed economic conditions (diminishing carrier revenues and earnings).

IV

The District Court was right in denying the Injunction on the other grounds stated in the Petition.

ARGUMENT

I

The Commission, in Denying the Petition to Rehear Filed by the Four Railroads, did not Abuse the Discretion Vested in it to Allow or Deny Rehearings Because the New Evidence which was thereby Sought to be Offered was Immaterial and Irrelevant.

The District Court permanently enjoined the Commission's order in question upon the theory that the denial by the Commission of the petition to rehear filed by the four railroads offering to prove upon such rehearing that the

gross and net revenue of the four petitioners and six other roads selected out of the scores of railroad defendants in the proceeding, had materially declined since January 15, 1930 when the record in this proceeding was closed, and that the refusal of the Commission thereby to entertain such evidence, amounted to a denial of such a full hearing as is provided for by Section 15, paragraph 1 of the Interstate Commerce Act (49 U. S. C. A., Section 15) and guaranteed by the 5th Amendment to the Constitution. (284-7)

Turning to the petition to rehear in question, it is clearly apparent that what the petitioners wanted was an opportunity to show the Commission upon further hearing that since January 15, 1930 when the record in the proceeding before the Commission was closed, their earnings on all traffic had undergone a material change for the worse and that the reduction in revenues that would result from the reduced rates prescribed by the order of December 1, 1931 would further impair their earnings. The only other thing that the petitioners wanted to show upon rehearing was that the rates from the Midcontinent field to South Dakota as well as the rates from the Midcontinent field to the territory immediately east of the destination territory involved, both of which sets of rates had been fixed by the Commission itself in other proceedings, were unreasonably low and should be increased. (146-150)

Scrutinizing the second of these two propositions first, it is at once obvious that evidence to prove that rates between points not in issue in the particular proceeding, looking to the increasing of such rates, is immaterial and irrelevant. The proceeding in which the petition to rehear was filed, brought in issue the level of rates solely from the Midcontinent field to North Dakota and western Minnesota. In such a proceeding, the petitioners upon rehearing want to offer evidence that the rates to other points not involved in

the particular case, are too low. That such evidence is immaterial and irrelevant in the particular proceeding is too elementary to warrant further comment.

If these petitioners have new evidence of a compelling nature that will demonstrate that the rates from the Mid-continent field to South Dakota or to the territory immediately east of the destination territory in this case recently fixed by the Commission, are unreasonably low and should be increased, the proper proceedings and the only proceedings in which such evidence is material and relevant and the only proceedings in which the Commission pursuant to such evidence can increase those rates, are the cases in which those rates were in issue and in which the rates which these petitioners now question, were fixed, towit; Dockets 16309 and 15584, respectively. (75, 19)

Certainly the Commission will not be held to have abused the discretion vested in it by Section 16a of the Interstate Commerce Act (49 U. S. C. A. Sect. 16a) to grant or deny petitions to rehear in proceedings before it, in refusing to entertain in the proceeding in question evidence designed and intended to bring about an increase in rates to points not in issue, particularly where the rates to these other points were in issue in other proceedings in which such rates had been recently fixed by the Commission.

Coming now to the first proposition raised by the petition to rehear as above stated, it happens that in at least two decisions of this Court it has been held that evidence as to carrier earnings from all traffic or the deficiency thereof, is immaterial and irrelevant in a proceeding like the one in question before the Commission where the rates on a single classification commodity such as petroleum products, are alone in issue.

It must be apparent upon the most superficial consideration aside from any supporting authority, that whether a combination of railroads involved or any one of them, is

paying dividends or is not earning enough to pay dividends can be no criterion for judging whether the rates on a single classification commodity such as petroleum products, are too high or too low where the railroads involved haul all classes of freight in the usual proportions. The deficiency in earnings, if that condition is present, may be due to the fact that the rates on the numerous other classes of freight are too low, or to any number of other factors that may contribute to the situation.

These very considerations were given succinct expression by this Court speaking through Mr. Justice Lamar in *Interstate Commerce Commission v. Union Pacific R. Co.*, 222 U. S. 541, where at page 549, he said:

> "Where the rates as a whole are under consideration, there is a possibility of deciding, with more or less certainty, whether the total earnings afford a reasonable return. But whether the carrier earned dividends or not sheds little light on the question as to whether the rate on a particular article is reasonable. For, if the carrier's total income enables it to declare a dividend, that would not justify an order requiring it to haul one class of goods for nothing, or for less than a reasonable rate. On the other hand, if the carrier earned no dividend, it would not have warranted an order fixing an unreasonably high rate on such article." (222 U. S. 549)

Judicial statement could hardly be framed that would more aptly conclude this controlling point in the instant case. In the light of that statement of the rule of evidence on the precise point involved, it cannot be gainsaid that this new evidence as to earnings or lack of earnings referred to as changed economic conditions, was immaterial and irrelevant in the particular proceeding which involved the rates on a single classification commodity as distinguished from the whole body of rates on all classes and commodities.

See also *Minneapolis and St. L. R. Co. v. Minnesota ex rel Railroad and Warehouse Comm.* 186 U. S. 257, where in judging the propriety of certain rates on coal fixed by the Minnesota Railroad and Warehouse Commission as reasonable per se for intrastate application, this Court held that the return on the whole schedule so fixed, affords no light on the reasonableness of a particular rate.

Upon the authorities cited as well as upon the inherent soundness of the proposition itself, it is respectfully submitted that the new evidence referred to in the petition to rehear as showing changed economic conditions which in reality is nothing more or less than a showing of reduced carrier revenues and earnings, is and was immaterial and irrelevant to the particular proceeding before the Commission.

It might be noted that here again the petitioners were exerting their efforts in the wrong proceeding. On December 5, 1931 the Commission rendered its decision upon further hearing of oral argument in *Fifteen Per Cent Case, 1931, Ex parte No. 103,* 179 I. C. C. 215, a proceeding in which the whole fabric of freight rates was involved pursuant to petitions by the railroads of the country generally including these petitioners, to grant general increases in all rates sufficient to meet the revenue exigencies of the carriers precipitated by the depression. In that proceeding the Commission, among other increases, authorized an increase of one per cent per 100 pounds in all rates on petroleum products including the identical rates here in issue. (204, 228) If the rates fixed by the Commission in that proceeding involving the whole fabric of rates did not yield the desired revenue to meet the requirements of these petitioners, then, it is respectfully submitted, their showing of new evidence of deficiency in earnings should properly have been made in the general proceeding cited where clearly it would be material and relevant because in that

proceeding all of their rates are involved and the revenue producing qualities of the general rate level is the particular issue.

It cannot be said that the rule of evidence stated in the cases just above cited has in any wise been changed or qualified by Section 15 (a) enacted into the Interstate Commerce Act since those cases were decided, directing the Commission to initiate rates, if necessary, to yield the carriers a proper return, since Congress even in that amendment was careful by proviso to preserve to the individual shipper his right under Section 1 of the Act to a reasonable per se rate on a particular commodity. Section 15 (a), paragraph 2, after providing that the Commission shall adjust the rates of the carriers so that in the aggregate they will earn a fair return, provides:

> "*Provided*, that the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country."

That Section 15 (a) was not intended to repeal or supercede Section 1 and the other rate fixing sections of the Act, is further evidenced by the following provision from Section 15 (a), paragraph 17:

> "the provisions of this section shall not be construed as depriving shippers of their right to reparation in case of overcharge, unlawfully excessive or discriminatory rates, or rates excessive in their relations to other rates, * * *."

It must have occurred to this Court in the course of this argument so far that if this evidence as to alleged change in economic conditions which as stated before comes

necessarily to nothing more or less than a showing of declining carrier revenues and earnings, was and is immaterial and irrelevant in this oil case, such evidence must likewise have been immaterial and irrelevant in *A. T. & S. F. Ry. Co. v. U. S.*, 284, U. S. 248, where this Court reversed the District Court and directed that an injunction be entered against the Commission's order in the *Grain Case* on the sole ground that in a proceeding before the Commission involving the rates on this single classification commodity, viz: grain, the Commission abused the discretion vested in it with respect to granting or denying rehearing when it denied the petition to rehear filed in that case which sought to introduce into that case evidence of diminishing carrier earnings that had occurred since the record therein was closed.

Clearly the decision of this Court in that case was erroneous in principle and in conflict with its decisions in the two cases herein cited. But it is equally clear that in that case neither the Government nor the Commission nor any of the interveners in opposition to the injunctive relief sought, raised this point or cited the cases here relied upon, on this controlling question of evidence. Since the decision of this Court in *A. T. & S. F. Ry. Co. v. U. S.*, supra, in no wise overrules or qualifies or even mentions the rule of evidence above quoted from *Interstate Commerce Commission v. Union Pacific R. Co.*, this latter case must be the controlling authority on the point.

It is respectfully submitted, therefore, that the Commission can not have abused its authority vested in it with respect to rehearings by denying the petition to rehear here in question, if the new evidence relied upon in support thereof was immaterial and irrelevant as it has been herein clearly shown to be.

II

The Interpretation Placed by the District Court Upon the Decision of this Court in A. T. & S. F. Ry. Co. v. U. S. 284 U. S. 248 and the Application of the Holding therein Made by said Court in this Case Amounts to a Preemption by the Courts of the Field of Rate Making which under the Constitution is Vested Solely in Congress.

That the power to prescribe rates for the future for transportation by common carriers is a legislative power which under the Constitution is vested solely in Congress and that the Interstate Commerce Commission in fixing rates for the future pursuant to the Interstate Commerce Act is acting simply as a legislative agency of Congress, are fundamentals so firmly established that they require no further exposition here.

The field of judicial review of orders of the Commission fixing rates for the future is equally well defined in the decisions of this Court. See for example *Interstate Commerce Commission v. Union P. R. Co.*, 222 U. S. 541, a case strikingly like the case at bar in many aspects, where this Court speaking through Mr. Justice Lamar, at page 547, said:

> "There has been no attempt to make an exhaustive statement of the principle involved, but in cases thus far decided, it has been settled that the orders of the Commission are final unless (1) beyond the power which it could constitutionally exercise; or (2) beyond its statutory power; or (3) based upon a mistake of law. But questions of fact may be involved in the determination of questions of law, so that an order, regular on its face, may be set aside if it appears that (4) the rate is so low as to be confiscatory and in vio-

lation of the constitutional prohibition against taking property without due process of law; or (5) if the Commission acted so arbitrarily and unjustly as to fix rates contrary to evidence, or without evidence to support it; or (6) if the authority therein involved has been exercised in such an unreasonable manner as to cause it to be within the elementary rule that the substance, and not the shadow, determines the validity of the exercise of the power. *Interstate Commerce Commission v. Illinois C. R. Co.* 215 U. S. 470; *Southern P. Co. v. Interstate Commerce Commission*, 219 U. S. 433; *Interstate Commerce Commission v. Northern P. Co.* 216 U. S. 544; *Interstate Commerce Commission v. Alabama Midland R. Co.* 168 U. S. 146, 174.

In determining these mixed questions of law and fact, the Court confines itself to the ultimate question as to whether the Commission acted within its power. It will not consider the expediency or wisdom of the order, or whether, on like testimony, it would have made a similar ruling. 'The findings of the Commission are made by law prima facie true, and this Court has ascribed to them the strength due to the judgments of a tribunal appointed by law and informed by experience.' *Illinois C. R. Co. v. Interstate Commerce Commission*, 206 U. S. 441. Its conclusion, of course, is subject to review, but, when supported by evidence, is accepted as final; not that its decision, involving, as it does, so many and such vast public interests, can be supported by a mere scintilla of proof, but the Courts will not examine the facts further than to determine whether there was substantial evidence to sustain the order." (222 U. S. 547-8)

When the decision of this Court in *A. T. & S. F. Ry. Co. v. U. S.*, supra, the *Grain Case*, is studied in connection with the decision in *I. C. C. v. Union P. R. Co.*, supra, it is impossible to determine under which of the six categories of reviewability, the order in the *Grain Case* was enjoined. And particularly is this so in the light of the discussion just had under the preceding section of this brief.

Certainly there is nothing in the Constitution that guarantees to a railroad or a set of railroads subject to regulation by Congress, the right to have the Commission reopen its proceeding and set aside its order fixing rates for the future on a single classification commodity where it is not even contended that said order is not supported by evidence of record before the Commission, except upon a showing that the resulting rates are confiscatory. There was no allegation of confiscation in the *Grain Case* and there is certainly none in this case.

If the carriers involved in such a proceeding relating to a single classification commodity are confronted with a situation of diminishing carrier earnings approaching the vanishing point which is aggravated by further reductions in rates on a single commodity ordered by the Commission, the proper procedure is to present such situation to the Commission in a proceeding that will bring in issue the whole fabric of rates from the operation of which as a whole the deficiency in total revenues has resulted. In no other way can the burden of transportation entailed by the necessities of the situation be distributed over the entire shipping public upon whom such burden should properly fall and the shippers of the particular commodity be accorded the intrinsically reasonable rates to which they are entitled under Section 1 as well as Section 15 (a) of the Act.

The *Grain Case* is not before this Court for reargument or reconsideration and the propriety or impropriety of the decision in that case is not now in issue save as that decision may be considered by this Court as properly determinative of the issues in the instant case. It is apparent from the face of the opinion of this Court in the *Grain Case* that it was moved to the unanimous action therein taken by the magnitude of the reduction of carrier revenues entailed by the order in question in the face of alleged dimin-

ishing carrier earnings which to the uninformed by long past experience, seemed alarming. We say uninformed respectfully and advisedly upon no less authority than that of this Court itself. See *I. C. C. v. Union P. R. Co.*, supra, page 547-8. We pause here to remark parenthetically that unless the grain rates from the producing territory to the primary markets which is the movement that in large measure was involved in the *Grain Case*, are sharply reduced, much of this traffic will eventually be diverted to truck transportation just as has happened in the case of livestock with even greater loss of revenue to the rail carriers which can never be recaptured. It must be remembered that a reduction in rates does not necessarily entail an ultimate reduction in revenue.

In the *Grain Case* this Court was confronted with an unusual situation. In the first place that was a Hoch-Smith Case, a proceeding instituted by the Commission upon its own motion in response to the provisions of the Hoch-Smith resolution (49 U. S. C. Section 55). The powers conferred upon the Commission by that Resolution were interpreted by it somewhat differently from the interpretation later placed thereon by this Court in *Ann Harbor R. Co. v. U. S.* 281 U. S. 658. The case affected a "vast territorial domain," countless railroads, scores of major issues incident to the transportation of grain, but most of all it presented a most arresting recital of diminishing carrier revenues referred to as changed economic conditions. The amounts arrayed ran into nine figures. The estimated reductions as a result of the Commission's order in question, would add another twenty million to the discouraging totals. The very magnitude of the alleged reductions occasioned by the order was manifestly the impelling reason which prompted the action of this Court in that case. All of these circumstances admittedly are exceptional.

The District Court, however, has drawn from the decision rendered under these exceptional circumstances, a rule of law to be applied "to a single carrier with a few miles of track, operating in a limited territory," that Court says:

> "The facts in this case and in that case *(Grain Case)* are different. The proceeding here in question was not initiated by the commission itself. The number of carriers involved in this case is not nearly so great; the territory affected is not nearly so large; the amount of carrier revenue affected by the reduced rates in this proceeding is comparatively small. The defendants and interveners feel that these things distinguish that case from this one. They believe that the Supreme Court was dealing with a specific case, and that the rule laid down by it can not be said to be properly applicable to a situation where the questions involved are not so important and the consequences so grave. It is logically impossible to see why the number of carriers, the extent of territory, the amount of carrier revenue affected, can furnish the solution to the question as to whether a hearing by the commission upon which an order reducing rates was based is fair or unfair, or whether its action in denying the petition for a rehearing was arbitrary or otherwise. A single carrier with a few miles of road, operating in a limited territory, is as much entitled to a fair hearing and fair treatment at the hands of the commission as a large group of carriers operating in any vast territory, and the law will certainly afford it the same protection. It has the same rights as the powerful group and may be very much more in need of them." (285)

In the *Grain Case* the record was closed September 22, 1928 and the order enjoined was dated July 1, 1930, the petition for rehearing was filed February 18, 1931. In the case at bar the record was closed January 15, 1930, the order sought to be enjoined is dated December 1, 1931 and the petition to rehear was filed February 3, 1932. When

this case was first heard the record was closed October 26, 1925 and the order made pursuant to that record was dated March 5, 1928. The lapse of time between the closing of the record of evidence and the Commission's decision as illustrated by the comparative dates just given, is not unusual in proceedings before the Commission. Although the shipping public is universally fretful over such lapses of time and delay in decision, there is none who will say that the Commission is not outstanding for its industry and diligence under all of the circumstances. This is not the occasion for any defense of the Commission on this score. If the situation can be remedied, the remedy rests alone with Congress. The facts, however, establish the proposition that of necessity under the exigencies of the situation, a considerable lapse of time between the closing of the record and the decision of the case is encountered in varying degree in every case.

Confronted with this situation as an established fact, if petitions to rehear must be granted "one carrier operating a few miles of track in a limited territory", the rule must operate equally in favor of the opposing party where the conditions are reversed, with the result that in every case, the parties are entitled, as a matter of right, to have cases reopened to bring the records down to date. Just how stale the record must be before the party will be entitled as a matter of right to have same reopened, injects another factor that further multiplies and complicates the Commission's functioning if any such application of the decision in the *Grain Case* as made by the District Court in this case, is sustained.

If logically carried through it is conceivable that a case before the Commission might never be decided if conditions can be alleged to be changing. The Commission would be so engaged in examining successive petitions to rehear that cases could be so practiced before the Commission that a

decision could never be reached, under the application made by the District Court in this case of the decision in the *Grain Case.*

If the decision in the *Grain Case* is right in principle, then that principle should apply indiscriminately regardless of the amount involved or anything else. Such an application of the *Grain Case* manifestly must inevitably lead to such an interruption of the processes of legislative rate making by the Commission as to constitute a preempting of that field by the judiciary under the guise of ruling that denial of petitions to rehear constitutes arbitrary action.

Manifestly the *Grain Case* was an exceptional case and must be so applied otherwise the application of that decision uniformly as logically must follow as pointed out by the District Court, if it is to be considered as binding in any other case, must necessarily lead to a complete prostration of rate fixing by the Commission.

III

In the Light of all of the Circumstances by which its Action was Necessarily Governed, it can not Rightly be held that in Denying the Petition to Rehear in Question, the Commission Denied these Petitioners a Full Hearing on the Alleged Changed Economic Conditions (Diminishing Carrier Revenues and Earnings).

It is conceded in the decisions of this Court that the Commission in passing judgment upon the matters presented to it and in making its findings, must act upon the record as made but in the light of the "information which it has acquired by experience." See *Illinois C. R. Co. v. I. C. C.* 206 U. S. 441, for example.

By experience the Commission has learned that in the end every inquiry concerning the level of freight rates

necessarily resolves itself to a greater or less degree, into a glorified guess as to what the traffic will bear or how much the shipping public can pay.

In the *Grain Case* this Court held that it was entitled to take judicial notice of the depression. If this Court must take judicial notice of the depression, then certainly there is an equal duty upon the Commission to take judicial notice of the depression in making its judgments or findings. If there is this duty upon the Commission, then it must be assumed in the absence of allegation and proof to the contrary that its judgments are cast in the mould so ordained

Now the only difference between the judicial notice which this Court gave to the depression in the *Grain Case* and the judicial notice which the Commission gave to the depression in passing upon the petition to rehear in this case lies in the fact that in the *Grain Case* this Court looked at the depression only as it immediately affected the railroads. This Court never once stopped to consider how the depression was affecting the shipping public and its ability or willingness to pay freight rates in the face of other forms of unregulated transportation at lower costs. When the Commission passed upon the petition to rehear in this case in taking judicial notice of the depression it had to look at both sides of the picture. It could not look only at the fact of diminishing carrier revenues but it had to look at the diminishing ability of the consuming public to support even the level of freight rates fixed by its order.

And this brings us to another important difference between the case at bar and the situation in the *Grain Case* and that is that in this case the Commission in another proceeding before it, viz: *Ex parte 103*, had simultaneously considered all the "facts" of the depression as distinguished from judicial notice of the situation. The Commission decided this oil case on December 1, 1931. On December 5, 1931 it made its final decision in *Ex parte 103*. The Com-

mission in passing upon the petition to rehear in this case did not have to rely upon judicial notice of the depression because it had all of the "facts" in *Ex parte 103*. This constituted its "informed experience" which under the law it is supposed to bring to the judgments it renders.

The petition instituting *Ex parte 103* was not filed until several months after the Commission had denied the petition to rehear in the *Grain Case*. The petition initiating *Ex parte 103* was filed June 17, 1931 whereas the petition to rehear in the *Grain Case* was filed with the Commission February 18, 1931 and was denied March 3, 1931. (178 I. C. C. 555; 284 U. S. 256-7). When the Commission denied the petition in the *Grain Case*, it had not examined in *Ex parte 103* all of the facts of the depression as they affected the railroads as well as the shipping public. In the case at bar, the denial of the petition to rehear was a judgment rendered out of an "informed experience" growing out of *Ex parte 103*.

Ex parte 103 was the kind of a proceeding that has been referred to heretofore as the sort of a proceeding in which the railroads might properly present to the Commission evidence of diminishing carrier revenues and earnings looking to rate changes to meet the situation. That proceeding involved the whole fabric of rates on every line of railroad and was instituted by the carriers in order to present to the Commission the facts as to changed economic conditions brought about by the depression and to secure an increase in rates that would produce additional revenue and earnings. The petitioners in the case at bar were parties to *Ex parte 103*.

Evidence was offered in *Ex parte 103* by both carriers and shippers. The Commission was informed by the evidence in that proceeding as to how the depression was affecting the shipping public as well as the carriers. The very oil rates that were in issue before the Commission in

the case at bar were also in issue before the Commission in *Ex parte 103*. Upon all the evidence and considering the needs of the carriers on the one hand and the likelihood of obtaining increased revenues through increased rates on the other hand, the Commission authorized an increase in the very rates here in issue of one cent per 100 pounds uniformly. Other increases were granted in other rates, all designed to meet the situation presented. See 179 I. C. C. 215, (204-230).

Undoubtedly what has just been indicated will serve to clarify and emphasize the contentions advanced under Section I of this Argument. If the emergency increases allowed in *Ex parte 103* are not sufficient in actual practice to meet the necessities of the five railroads petitioning in the instant case, then clearly their petition to rehear should be filed in *Ex parte 103* and not in this case which involves only a small part of their oil traffic which in turn is a small part of their total traffic. In *Ex parte 103*, upon further hearing, if the showing warrants and it is satisfied that further increases of these oil rates will yield additional revenues all rail from the Midcontinent field, the Commission will undoubtedly further increase all oil rates, including those involved in the instant case, as well as all of the other rates of these petitioners as may be required to meet the situation.

But the propriety of the Commission's denial of the petition must also be judged in the light of the other circumstances and conditions present in this situation.

These small independent oil jobbers who are the complainants before the Commission in this case, have to meet the competition of the large integrated oil companies such as the Standard Oil Company (Indiana) and the Texas Company and the Standard Oil Company (New York) through its ownership of the White Eagle Company, which own and operate bulk plants and filling stations in the des-

tination territory as well as owning and operating through affiliated corporations their own refineries and pipe lines. These integrated companies have large refineries in Wyoming and Montana which refine the crude oil which these companies control in those states. These large integrated companies are not equally entrenched in the Midcontinent field where the production is in great measure by a large number of so-called independent refineries.

The small independent jobbers can not secure their supplies of gasoline and oils from the large integrated companies except they contract to handle the products of one such company exclusively. These small independent jobbers are forced, therefore, to obtain their supplies from the independent refineries in the Midcontinent field, in large measure, if not entirely. These independent refineries on the other hand can not sell their product through the jobbing companies of the large integrated companies, with the result that these independent refineries are dependent in large measure upon the small independent jobbers for the outlet for their product. The combination of the independent refiner in the Midcontinent field and the independent jobber at destination supplies a part of the competition which the large integrated companies have to meet in marketing their product. There is, of course, a certain competition between the large integrated companies themselves. Over sixty per cent of the petroleum products consumed in the destination territory here involved is sold by the large integrated companies, supplied largely from their Wyoming refineries. (112-114)

In addition to this factor of strong commercial competition between competing producing fields through competing outlets in a common market territory, there is a carrier situation here present that arises from the fact that the delivering lines have a different and a conflicting interest from that of the rail lines that originate this traffic in the Midcontinent field. The traffic in the

Wyoming field is originated by the Chicago and Northwestern or the Chicago, Burlington & Quincy. Each of these carriers in turn forms a part of available routes from the Midcontinent field to this market territory. The Burlington is jointly owned by the Great Northern and Northern Pacific. (See *Great Northern Pac. Ry. Co. Acquisition,* 162 I. C. C. 37, 71). The Great Northern and Northern Pacific in turn are the chief delivering lines measured by the extent of lines in the territory, followed by the Soo Line, the Milwaukee and finally the Northwestern with a negligible mileage in the destination territory. In the very nature of things, these destination carriers are the same whether the traffic originates in Wyoming or in the Midcontinent fields. It is apparent, however, that if the traffic originates in the Wyoming field it must move out by either the Northwestern or Burlington each of which will probably handle the traffic direct until it is turned over to the delivering line where either is unable to perform the entire transportation. On the other hand, there are scores of carriers under the routings available on traffic moving from the Midcontinent field, that can participate in such traffic before it is turned over to the destination lines for delivery. Among these scores of possible intermediate carriers the Northwestern, Burlington and Milwaukee are included even though they may not be the delivering line. (See carriers listed as parties defendant to order in Docket 17304, Transcript pages 104-10)

The short line route from the Midcontinent field to western North Dakota figures via Kansas City and Aberdeen, South Dakota, whereas the short line route to eastern North Dakota and western Minnesota figures through Kansas City, Sioux City and Willmar, Minnesota. The larger part of the traffic, however, moves via St. Paul, Minnesota where it is delivered to the destination lines, all of which operate from St. Paul into the destination territory. (113, 123, 126)

Either because of the continuity of interest between the Burlington and the chief destination lines, to wit; Great Northern and Northern Pacific and because of the basis of divisions with the Northwestern which these destination lines are able to negotiate on traffic from Wyoming in view of their ownership of the Burlington, or because of the powerful influence of the large integrated companies through their control of a vast tonnage, the combination of carriers operating from Wyoming to this destination territory find that traffic more to their liking than the petroleum traffic moving from the Midcontinent field. Indeed these considerations were strong enough to lead these carriers to propose and fight strenuously to justify, reduced rates from Wyoming to this territory that would have entailed reductions in revenue far greater than that involved in the Commission's order that has been enjoined in this case. (112-115)

In addition to this factor of strong competition of the combination of rail carriers serving this destination territory from the Wyoming field versus the other many combinations of rail carriers that can supply the petroleum demands of this destination territory from the Midcontinent fields, there is a further factor of carrier competition and that is the competition of pipe lines and the rate policies under which they are operated.

A gasoline pipe line is owned and operated from the Midcontinent field to Minneapolis by certain of the larger oil companies with refineries in that field. The pipe line rates to Minneapolis in connection with the local rail rates from Minneapolis to the destination territory are designed to equalize with the joint through all rail rates from Tulsa (Group 3) to the market territory. The oil companies owning this pipe line maintain their own outlets in the market territory which they supply from the Midcontinent field via their pipe line to Minneapolis in connection with

the local haul of the delivering rail lines before named from Minneapolis to the destination territory. This pipe line is a common carrier and transports gasoline of other interests that offers itself. These delivering lines want this traffic from the Midcontinent field to move to Minneapolis via pipe line because on this traffic they get their full local instead of a division of a joint through rate which may be less. In either instance, however, the revenue resulting is dependent, under the rate policy observed by the pipe line, upon the level of the joint through all rail rate. If the all rail rate is reduced such reduction must be met by a reduction of the pipe line rate to Minneapolis or by a reduction in the local rail rates of the delivering lines from Minneapolis or by lesser reductions in both. (149; 245)

There is one further situation that needs to be mentioned to complete the background of the picture of this case and that is the fact that the price of petroleum products at Tulsa is a price barometer in the oil trade just as the Pittsburg price is the price barometer in the steel industry. The freight rate from Tulsa to a particular destination assumes, therefore, a vital price significance even though not a car of petroleum ever moves, because the freight rate plus the Tulsa price represents the published competition that must always be met in supplying a particular market.

From this recital of trade conditions in the oil industry and competitive conditions actuating the carriers, the Court must undoubtedly have sensed the contending forces that were set in motion when these small independent jobbers in the destination territory, somewhat naively, filed a complaint with the Commission looking solely to a reduction of the rail rates they were paying on their shipments from the Midcontinent field and the recovery of the unlawful excess paid on past shipments. This recital is enough to explain, without further particularization, why the delivering lines joined with the lines operating from Wyom-

ing in publishing reduced rates from Wyoming which for the Northwestern alone involved an annual reduction in revenue of $370,000.00 but which were suspended by the Commission; why following the cancellation of these proposed reductions by order of the Commission in I. & S. 3148, the Standard Oil Company (Indiana) filed a formal complaint against the Wyoming rates; and, why these delivering lines then made such a determined effort to get the complaint of these independent jobbers against the unreasonableness of the rates from the Midcontinent field, consolidated for hearing with the Standard Oil complaint so that this Section 1 complaint against the level of rates from the Midcontinent field could be turned into an undue prejudice consideration rather than a consideration of intrinsic unreasonableness solely; and, why, finally, this suit is brought to enjoin the rates from the Midcontinent field by only five out of the many scores of railroads really involved, these five being the lines that seem to be actuated by some subtle influence that makes them pro-Wyoming and contra-Midcontinent field all rail.

The complaint of these small independent jobbers in western Minnesota and throughout North Dakota was filed with the Commission July 15, 1925 and was docketed as No. 17304. (4) The case was heard by an Examiner of the Commission at Fargo, North Dakota, October 23-26, 1925. (5) The case was decided by the Commission March 5, 1928, a little over two years and four months after the record was closed. (6) On a record that was closed October 26, 1925, the Commission decided on March 5, 1928 that effective June 14, 1928, the rates attacked July 15, 1925 would be unreasonable for the future by prescribed amounts but that such rates that had been paid during the period indicated, had not been unreasonable by any amount. This negative finding on past unreasonableness, under this Court's decision in *Procter & Gamble Co. v. I. C. C.*, 225

U. S. 282, 292, and *Manufacturer's R. Co. v. U. S.*, 246 U. S. 457, 483, foreclosed these complaints from a review in the Courts of this clearly erroneous decision as to past unreasonableness and reparation.

The facts are that during the period indicated of over two years, these shippers paid rates that were unreasonable as established by the record before the Commission. The measure of the unreasonableness involved, is indicated by the following comparison of the rates attacked and the rates found reasonable by the Commission effective June 14, 1928 taken from Appendix C of the Commission's decision. (87)

FROM GROUP 3 TO	Rate Assailed.	Rate Prescribed Effective June 14, 1928	Rate Prescribed Effective March 15, 1932. (X)	
Morris, Minnesota	58	54	50	
Fergus Falls, Minnesota	64	61	55	
Wheaton, Minnesota	56.5	—	55	(Collis-Wahpeton)
Wadena, Minnesota	62.5	62.5	55	
Bermidji, Minnesota	70.5	67	60	
Grand Rapids, Minnesota	64	70*	60	(Warba-Bermidji)
Wahpeton, North Dakota	65	60	55	
Fargo, North Dakota	70	62	57	
Grand Forks, North Dakota	75.5	70	63	
Davids Lake, North Dakota	83.5	74	70	
New England, North Dakota	102.5	80	78	
Wallhalla, North Dakota	86	80	72	
Jamestown, North Dakota	81	76	63	
Rugby, North Dakota	89.5	77	73	(York-Towner)
Minot, North Dakota	92	81	75	
Bismarck, North Dakota	94.5	82	70	
Antler, North Dakota	99	88	80	
Williston, North Dakota	111	88	85	(Epping-Fort Bufford)
Dickinson, North Dakota	107	88	78	

* Because of a Fourth Section violation the carriers could not put in the 70 cent rate prescribed but had to publish a rate of 67 cents instead.

(X) The rates prescribed by the Commission upon rehearing which will be referred to hereinafter, are also set forth in this table. These rates were taken from Appendix B, to the Commission's decision herein dated March 30, 1929 (111, 132-144).

In connection with the rates prescribed effective June 14, 1928, the Commission pointed out that such rates were intended as representative and directed the defendants to establish rates to the other destinations involved in proper relationship thereto, having due regard for difference in distance. (186) The defendants, however, did not carry out this injunction. The rates published to points in southern North Dakota were so high as compared with the rates prescribed to points in northern South Dakota like Aberdeen, that the jobbers at those points were confronted with a new condition, namely, competition from tank trucks sent out from competing points enjoying these lower rates. For example, the rate to Rutland, North Dakota was published as 63 cents and to Ellendale 71 cents, to Oaks, North Dakota a rate of 73 cents and to Edgeley, North Dakota a rate of 73.5 was published, as compared with a rate of 55 cents prescribed to Aberdeen. The Aberdeen distance is 875 miles as compared with 913 miles to Ellendale, 929 miles to Oaks, 939 miles to Edgeley, while Rutland is only 64.4 miles from Aberdeen via the Great Northern. (See appendices to reports 131, 133, 139, 144)

From the Minnesota entrance to the destination territory a similar rate inconsistency was encountered from the Mid-continent field under the rates published by the defendants in supposed compliance with the Commission's decision, so that the rates to 106 out of 836 destinations involved, were, as a matter of fact, increased. (124)

Upon analysis it was also apparent that the level of rates prescribed by the Commission to North Dakota and western Minnesota was on a higher basis than the level fixed in the same decision to South Dakota. For example, using first class rates under the Southwestern Scale as the common yardstick, the rates prescribed to points in the eastern part of South Dakota, such as Yankton, Mitchell, Huron, Chamberlain and Watertown varied from 20 to 22.5 per

cent of the corresponding first class rate under the scale. (131, Appendix A) Whereas the rate fixed to Fargo, North Dakota on the eastern boundary of North Dakota was 24.5 per cent, the rate prescribed to Wahpeton, North Dakota was 24.5 per cent, the rate prescribed to Bermidji, Minnesota, was 26 per cent, of the corresponding first class rates under the scale. (Column C of Appendix B, 132-144). Turning to the western part of South Dakota as compared with the western part of North Dakota a corresponding disparity is disclosed. To Rapid City, South Dakota the rate prescribed by the Commission is 26 per cent, to Isabel 27 per cent, to Dead Wood 26.5 per cent, to Lemmon 26.5 per cent, to Belle Fousche 27 per cent and to Faith 28 per cent of the corresponding first class rates under the scale. (131, Appendix A) To Bismarck, North Dakota the rate prescribed by the Commission was 31 per cent, to Jamestown, North Dakota 30 per cent, to Oaks 29.5 per cent, to Dickinson 32 per cent, to New England 29.5 per cent (mistakenly shown in the record at page 144 as 20.5 per cent), to Antler 31.5 per cent, to Minot 29.5 per cent of the corresponding first class rates under the scale. (Appendix B, 132-144) The decision of the Commission indicated no evidence of record which would justify a higher level of rates to the destination territory in western Minnesota and North Dakota than that prescribed for South Dakota. (75-87)

A petition to rehear was filed with the Commission May 21, 1928 by these independent oil jobbers setting forth the matters just above recited. That petition was denied February 11, 1929. A second petition filed April 19, 1929 was granted June 10, 1929 and the Commission reopened this case for further hearing. (237) Further hearing was had at Fargo, North Dakota January 14-15, 1930. (11) Upon the record as supplemented by the additional evidence presented by both complainants and defendants upon this further hearing, the Examiner proposed rates substantially

below the rates fixed by the Commission effective June 14, 1928 which he found had been unlawfully excessive since that date to the extent they exceeded the rates he proposed and awarded reparation to that basis. (See Appendix B, Column E, 132-144) Pursuant to exceptions to the Examiner's report and briefs in support thereof, the Commission under date of December 1, 1931, rendered its second decision in this case in which it prescribed in lieu of the rates which it had previously fixed herein effective June 14, 1928, a lower level of rates but not as low as that proposed by the Examiner and instead of awarding reparation as was proposed by the Examiner, the Commission denied reparation except in certain instances in which the Commission was of the view that the carriers had not established rates as required by its former order. Here again the Commission upon a record that was closed January 15, 1930 decided on December 1, 1931 that rates were shown by that record to be unreasonable effective March 15, 1932 but refused to hold that in the interim the rates paid by the complainants had been equally unreasonable and denied reparation. As stated before, with reference to the Commission's findings as to reparation and past unreasonableness in connection with the former decision, under the decisions of this Court because the order as to reparation is negative, the shippers are without remedy to secure correction in the Courts of the manifest error of law.

The rates prescribed for the future by the Commission in its second decision have been set forth in the above table. If the percentage relationship of these rates to first class rates under the Southwestern scale as shown in column G of Appendix B, (132-144) is compared with the similar percentages under the South Dakota rates shown in Appendix A (131) it will be noted that even these rates are still on a higher level than the South Dakota rates, particularly those to western North Dakota destinations. As has been

before noted, to the more western points in South Dakota the rates prescribed by the Commission reflect percentages of the first class rates under the Southwestern scale ranging from 26 to 28 per cent whereas the rate prescribed to Minot effective March 15, 1932 is 27.5 per cent and the rates prescribed to more western North Dakota points reflect percentages as high as 29 per cent in many instances. In this connection it might be noted that in a recent case to points in western Nebraska and eastern Colorado from the Midcontinent field, the Commission prescribed rates on petroleum products 25 per cent of the first class rates under the Southwestern scale. See *Porter Oil Co. v. A. T. & S. F. Ry. Co.*, 172 I. C. C. 407. And that throughout Southwestern territory which includes Oklahoma and Texas, the Commission has prescribed petroleum rates for local application that are on a basis that is even less than 25 per cent. See *Refined Petroleum Products in Southwest*, 171 I. C. C. 381; 174 I. C. C. 745.

On February 3, 1932 only the Northern Pacific, Great Northern, Soo Line and Milwaukee out of the scores of defendants to the complaint before the Commission, filed a petition for rehearing with the Commission. This petition recites, it is true, that it is filed on behalf of petitioners "and in behalf of all other defendants herein." (146) But the authority of these petitioners to act upon behalf of any others than themselves in filing that petition, does not appear of record. It is to be noted that the Northwestern, which is a petitioner in the case on trial, was not a petitioner in the petition to rehear filed with the Commission. It is also to be again noted that none of the scores of rail lines who were defendants before the Commission, are petitioners in the case on trial except the four delivering lines and the Northwestern, a group that seems particularly interested in moving petroleum products from Wyoming

or from the Midcontinent field by pipe line to Minneapolis from which point they get the delivering haul at their full local rates. (245)

This petition to rehear filed with the Commission by the four lines mentioned, recites that the yardsticks of reasonableness used by the Commission upon rehearing in reaching its conclusion as to the intrinsic unreasonableness of the rates originally fixed in this case, towit; the level of rates prescribed by it to South Dakota and the level of rates prescribed by it up to the eastern gateways to the destination territory involved, were bases of rates fixed by the Commission upon records that were closed in 1925 and that traffic and transportation conditions pursuant to which those yardsticks of reasonableness were established, have changed and are wholly different now and that if given an opportunity to do so, the petitions aver that they could prove that these rate levels fixed by the Commission in the *South Dakota Case*, Docket 16309, (75), and in the *Midcontinent Case*, Docket 15584 (19) were unduly and unreasonably low in the light of existing circumstances and conditions and can and should be substantially increased. The petitioners fail to set out any comparative data on traffic and transportation conditions to support their statement that since 1925 there has been such a change in these conditions as to render the rates fixed in those cases unduly and unreasonably low in the light of existing conditions. But whatever the fact may be in this particular, the important thing to be noted is that the petitioners although they were parties to the proceedings mentioned, do not ask in their petition that those cases be reopened and that the rates therein prescribed be increased. (149-150, 246)

It is significant that the petition to rehear does not allege that the rates fixed by the Commission upon further hearing to North Dakota and western Minnesota are too low

as compared with the rates fixed by the Commission to South Dakota and the rates also fixed by the Commission up to the eastern boundary of the destination territory here involved. On the contrary the petitioners recognize that the rates to the destination territory here involved can not properly exceed relatively the rates prescribed to South Dakota on the one boundary and to the eastern adjacent territory on the other boundary. (149-150, 246)

In considering the petition to rehear, the Commission had to take these many elements of trade conditions as well as carrier differences into account as well as the question of diminishing carrier revenues and ability of shipping public to pay. The Commission had to look at the rates themselves which it had prescribed and the Commission had to recognize that the petition only sought a rehearing of the particular situation which would leave relatively lower rates in effect to South Dakota and the eastern adjacent territory than to North Dakota and western Minnesota, for a further period during rehearing. The Commission had to consider the effect of the situation upon the rail carriers that originate this tonnage in the Midcontinent field, also defendants, which, however, were not petitioning.

Is this Court in the light of all of these controlling circumstances that the Commission was bound to consider, prepared to say that the Commission acted so arbitrarily in denying the petition to rehear in question, that its action was tantamount to denying the "full hearing" provided by law?

It is respectfully submitted that the District Court erred in permanently enjoining the Commission's order of December 1, 1931 on the ground that the Commission, by denying the petition to rehear, denied the "full hearing" provided by law, and that its decree should, accordingly, be reversed and the injunction vacated.

IV

The District Court was Right in Denying the Injunction on the Other Grounds Stated in the Petition.

As indicated in the opening statement, the injunction against the Commission's order of December 1, 1931 was sought upon three grounds. In addition to the ground upon which the injunction was granted which has been the subject of discussion in the preceding sections of this Argument, it was also urged:

1. That the rates fixed by the order of December 1, 1931 as shown by the face of the Commission's report, were without evidence of record to justify them as "intrinsically" reasonable as distinguished from "relatively" reasonable.

2. That in refusing to consolidate the case in question with cases involving rates from Wyoming as petitioned by these carriers, the Commission acted so arbitrarily as to deny to petitioners a fair hearing on the question of the intrinsic unreasonableness or reasonableness of the rates under attack from the Midcontinent field.

The District Court passed on each of these grounds and the contentions of the petitioners urged in support thereof and in each instance denied the injunction. That Court is so palpably right in its conclusions that little need be added to supplement the consideration given these contentions by the Court as set forth in its opinion. (273-284)

Under the first ground the petitioners attempt to draw a distinction between "intrinsic" and "relative" reasonableness. A similar contention has been many times urged upon the Commission itself.

In *Sioux City Chamber of Commerce v. B. & O. R. R. Co.*, 120 I. C. C. 7, at page 14, in considering the contention the Commission said:

"Another contention of defendants is that our findings in the original report were that the rates to Sioux City were relatively unreasonable, which they consider equivalent to a finding of undue prejudice, and that they were not intrinsically or absolutely unreasonable. This contention applies to the rates from the docks as well as those from the Illinois mines. It is pointed out that we said that Sioux City's complaint was chiefly one of relationship, and we said that the rates prescribed would properly align the rates to Sioux City with those to surrounding points. It is seldom, if ever, that a rate can be found unreasonable without comparison with the rates to other points. One of the best tests of the reasonableness of a rate is by comparison with the rates on like traffic in the same territory. The interstate commerce act recognizes no distinction between relative unreasonableness and intrinsic or absolute unreasonableness." (120 I. C. C. 14)

See also: *Wyoming Coal Co. v. V. Ry. Co.*, 98 I. C. C. 488, 497; *Nagase & Co. v. D. G.* 62 I. C. C. 422, 426; *Corporation Commission of Vir. v. C. & O. Ry. Co.*, 40 I. C. C. 24, 28.

In *Mellon v. World Publishing Co.* 20 F. (2d) 613, C. C. A. 10th Circuit; 16 F. (2d) 130 U. S. D. C. Okla., which was a case to enforce a reparation award of the Commission where the Commission in its report had said that the rates assailed were "relatively" unreasonable and it was urged that this amounted to a finding of undue prejudice rather than a finding of "intrinsic" unreasonableness, it was held, however, that although the Commission had used the word "relatively" in describing the unreasonableness found, this did not alter the fact that the rates were unreasonable in violation of Section 1 of the Act, as alleged, and that rates found to be unreasonable in their relation to other rates used as the standard of reasonableness, could not be construed to be only unduly prejudicial. Certiorari was denied in that case by this Court, 275 U. S. 561.

In the very nature of things there are only two possible ways of demonstrating that freight rates are too high or too low, First: There are certain situations where the cost of performing the transportation service for which the rate or rates are published, is ascertainable with sufficient accuracy to be entitled to be accorded some probative value. This cost so ascertainable will necessarily bear a direct relation to the volume of traffic used as the basis of the computation. Since the volume of traffic in most instances is a variable that fluctuates with general market conditions, this method of proof is seldom of real probative value in testing future reasonableness. There are undoubtedly instances though where ideal conditions are encountered where cost of service for transportation can be satisfactorily established. These instances would be confined, however, to cases where all of the carrier rates are under review or where if the rates on a single commodity are in question, the traffic of the particular carrier or carriers is so predominantly of the particular commodity as to render the other traffic hauled of little or no accounting significance. Such cost analysis means little unless it can be related to revenues and the return, if any, related to the value of the carrier property. This last requirement injects another variable into the situation under the decisions of this Court holding that cost of reproduction new constitutes an indispensable factor of such value. What is the legal value of a railroad property under these decisions although the identical property is involved, will be one amount one year and quite a different amount another year, depending upon the price level of those things entering into railroad construction. It must be apparent, therefore, that cost analysis as a method of proving rates reasonable or unreasonable for the future, is necessarily limited to a narrow field and even in that field the results are of doubtful probative value in fixing a basis of rates for the future. In

addition to the infirmities inherent in this method of proof, it is a method that is not available to the shippers because even under the elaborate publicity given carrier accounts the basic data for any such study of costs is in the sole possession of the railroads.

The other method of proof is to compare the rates in question with other rates for a similar service, which comparative rates because they were voluntarily established by the carriers themselves or because they were fixed by regulatory authority, acquire a status as "yardsticks of reasonableness" which is judicially recognized. See authorities cited and discussed by the District Court. (282-284)

It is the later method of proof to which the shippers have sole recourse, in the premises. If the probative value of such evidence is now to be questioned, the shipping public will be foreclosed to ever establish violation of Section 1 of the Act in proceedings before the Commission.

Coming to the second ground upon which the injunction was sought, as above stated: This Court, of course, is well versed in the difference between the remedy afforded by Sections 1 and 3 of the Act. If rates are found to be unreasonable in violation of Section 1, the order entered pursuant to such finding requires a reduction to a reasonable basis as found in the report. On the other hand, if rates are found to be unduly prejudicial in violation of Section 3, the order can only require the carrier defendants to remove the undue prejudice. Such order can be complied with by reducing the higher rates charged the complaining shipper or increasing the preferential rate charged the favored shipper.

Because of the influence upon the delivered price of the freight rate from Tulsa (Midcontinent field, Group 3) as referred to parenthetically under the preceding section of this Argument, the relief particularly necessary from the standpoint of these small independent jobbers who were

complaining, was a reduction in the rates from the Midcontinent field. And under the law they were entitled to the reduction if they could prove the rates attacked, were too high.

If the Commission pursuant to the petitions in question had consolidated this case with the Wyoming cases, the consolidated proceeding would, for all practical purposes, have been converted into an undue prejudice consideration under Section 3 and these complainants would have been denied their right to a clean cut trial under Section 1 upon their complaint as made.

Certainly the petitioning railroads were in no way prejudiced as far as the instant case is concerned by the refusal of the Commission to consolidate. They still had the right to and did introduce in evidence in the instant case the question of the level of the rates from Wyoming (Casper as typical) to the destination territory as a measure of what should be reasonable to the same territory from the Midcontinent field. (125) But the complainants were able to use the low level of rates from Casper to other adjacent destinations to demonstrate the unreasonableness of the Midcontinent rates in question. (124-5)

Section 13, paragraph 1 of the Act, (49 U. S. C. A. Section 13, para. 1) provides that in complaint and answer cases before the Commission, if any reasonable ground for investigating such complaint appears:

> "it shall be the duty of the Commission to investigate the matter complained of in such manner and by such means as it shall deem proper."

That the Commission was acting within its powers in refusing the petitions involved, cannot be questioned in the face of the statute.

It is respectfully submitted that the District Court was right in denying the injunction on these two grounds.

CONCLUSION

The decree of the District Court permanently enjoining the Commission's order of December 1, 1931, should be reversed and the injunction vacated.

Respectfully submitted,

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ELWIN E. HADLICK,
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January 1933

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No. 470

In the Supreme Court of the United States

OCTOBER TERM, 1932

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL., APPELLANTS

v.

THE NORTHERN PACIFIC RAILWAY COMPANY ET AL., APPELLEES

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA, THIRD DIVISION

REPLY BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

In the Supreme Court of the United States

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THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al., appellants

v.

THE NORTHERN PACIFIC RAILWAY COMPANY ET AL., appellees

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA, THIRD DIVISION

REPLY BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

Appellants' opening brief dealt only with the one ground upon which the lower court enjoined the Commission's order of December 1, 1931, viz., that the denial of the carriers' petition for rehearing to show changed conditions was arbitrary and deprived them of a fair hearing. (R. 295.) We still believe that is the only question in the case. However, appellees in their brief have argued other points in support of the decree below, and as the

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decision of this court in *United States* v. *American Railway Express Company,* 265 U. S. 425, 435–436, indicates that this is proper, even though no cross-appeal is taken, appellants desire here to answer additional grounds of invalidity urged by appellees, all of which were found by the court below to be without merit. (R. 277–284.)

I

The claim is made that the order of December 1, 1931, is void because its effect is to reduce rates previously declared reasonable by the Commission, not because such rates were unreasonable in and of themselves and based upon the service rendered, but to bring about harmonious relationships between such rates and rates not in issue to other destinations; (R. 13) in other words, that the Commission's finding of unreasonableness was one of "relative" unreasonableness, and not one of "inherent" unreasonableness.

The fact that the Commission had in an earlier decision prescribed a basis of rates as reasonable is not tantamount to an estoppel. The Commission has the power and the duty to modify previous orders, if new evidence warrants the change. A rate order is not *res judicata;* every rate order may be superseded by another. *Tagg Bros.* v. *United States,* 280 U. S. 420, 445. The evidence that was before the Commission is not before the court, and in its absence it is respectfully suggested that there is a conclusive presumption that the new evidence

warranted the new order. (Compare *Louisiana & Pine Bluff Ry. Co.* v. *United States,* 257 U. S. 114, 116; *Spiller* v. *Atchison, T. & S. Fe Ry. Co.,* 253 U. S. 117, 125; *Chicago, I. & L. Ry. Co.* v. *United States,* 270 U. S. 287, 295; *Nashville, C. & St. L. Ry. Co.* v. *Tennessee,* 262 U. S. 318, 323–324.)

The first decision of the Commission dealing with either Docket 17304 or 21737 (which are the consolidated cases before this court) was its second supplemental report in *Midcontinent Oil Rates, 1925,* decided March 5, 1928. (R. 75–87.) Therein the Commission found that the rates from Group 3 points to destinations in South Dakota, North Dakota and northwestern Minnesota were unreasonable as well as unduly prejudicial. Specifically, its finding was:

> 1. That the rates on gasoline and other petroleum products taking the same rates from Group 3, as that group is defined in our original report herein, to points in South Dakota, North Dakota, and that part of Minnesota covered by these proceedings, are and for the future will be unreasonable and unduly prejudicial to the extent that they exceed the respective rates set forth in Appendixes A and C under the heading "Rate prescribed." (R. 85.)

It is also true that in its decision the Commission directed the carriers to adjust their rates to other destinations "in proper relationship thereto, having due regard for differences in distances". (R. 86.) It seems clear that this decision was not

simply to "harmonize" the rates from Group 3 points to destinations in North Dakota, South Dakota and northwestern Minnesota with the reduced rates prescribed by the Commission's earlier decision of May 10, 1926 (R. 19) to Sioux City, Sioux Falls, St. Paul and Duluth and intermediate points, but that the Commission also found the old rates unreasonable and required changes therein. Its finding in the report directly before the court for review, that of December 1, 1931, (embracing also Docket 21737, R. 120) was an equally clear finding of unreasonableness. That finding reads:

> Upon the whole record now before us, we find that the rates assailed prior to June 14, 1928, were not unreasonable; that those applicable on and after that date until the effective date of our present order for the future were unreasonable only in the instances and to the extent they exceeded the rates shown from Group 3 in column H of Appendix B hereto, plus or minus the differentials from other origin groups applicable to Willmar and St. Paul, Minn.; *and that on and after the effective date of our order for the future, the rates assailed will be unreasonable to the extent they exceed or may exceed those shown from Group 3 in column F of Appendix B, plus or minus said differentials from the other origin groups.* Our previous findings are modified accordingly. (Italics supplied.) (R. 129.)

The order, requiring the reduced rates to be established on or before March 15, 1932, (R. 145) is

to be read in connection with the accompanying report (*Georgia Commission* v. *United States,* 283 U. S. 765, 771.) The recitals in the report clearly show the Commission dealt with the inherent unreasonableness of the rates, for it discusses ton-mile and car-mile earnings, (R. 124–125); the routes of movement of the traffic, (R. 123); evidence showing traffic density figures and other statistical data reflecting conditions surrounding the transportation of the traffic, (R. 126), and the unreasonableness of the assailed rates as compared with numerous other rates, including rates previously prescribed by the Commission as reasonable from the same general producing areas to the same general destination territory, together with their resulting revenues. (R. 124–127.) Had the Commission based its finding of unreasonableness entirely upon comparisons with other rates, decisions of this court sustain such a finding. (*Louisville & N. R. Co.* v. *United States,* 238 U. S. 1, 12; *Western Paper Makers' Chemical Company* v. *United States,* 271 U. S. 268, 271.)

In overruling the appellees' contention upon this point, the lower court said:

> * * * What we are asked to do is to find from the language of the report that the commission entirely disregarded the reasonableness of the rates as such and proceeded upon the theory that it might arbitrarily relate these rates to other rates, although it knew the latter to be less than

those which might reasonably be charged for the service rendered. We do not think that we would be justified in so finding. The issue as to whether these rates were reasonable was squarely before the commission. In determining that question it had the right to compare the rates assailed with other rates which in its judgment formed a proper basis of comparison. (Id. 281–282.)

* * * * *

Whether a rate is voluntarily established by a carrier or prescribed by the commission, if in the judgment of the commission it represents all that may reasonably be charged for the service performed, there would seem to be no logic in holding that it would not constitute some evidence of what might properly be charged for a similar service under similar conditions. (R. 283.)

II

Another claim is that the order is void because in prescribing the reduced rates, the Commission considered the relationship only of such reduced rates to rates not in issue from the Midcontinent field to South Dakota and the gateways on the eastern border of the destination territory, and arbitrarily refused to consider the relationships between the rates in issue and the comparative rates from Casper, Wyo., on the ground that these relationships had not been brought into the case by the complainants. (R. 13–14.)

An examination of the report will show that the rates to South Dakota and to the gateways on the eastern border of destination territory were constantly before the Commission. The complainants in Docket No. 16309, which had been consolidated with No. 17304 (one of the cases here under review) alleged that the rates on petroleum and its products from points in Missouri, Kansas, Arkansas, Oklahoma, Indiana, Illinois, Wisconsin, Montana, and Wyoming to destinations in South Dakota are unjust and unreasonable, and unduly prejudicial as compared with relatively lower rates from the same points of origin to destinations in Iowa, Minnesota, and Nebraska, and in South Dakota on the line of the Chicago, Milwaukee & St. Paul from Sioux City, Iowa, to and including Sioux Falls, S. Dak. (R. 76.)

These consolidated cases were disposed of in the Commission's Second Supplemental Report in *Midcontinent Oil Rates,* 1925, decided March 5, 1928. (R. 75.) The South Dakota rates are fully discussed therein. (R. 77–83.) In the report of December 1, 1931, the South Dakota rates were again discussed, the Commission saying:

> In our former report we also prescribed maximum reasonable rates from the midcontinental field to a number of points in adjacent territory in South Dakota reached by the lines of two of the principal defendants operating in the destination territory. The latter are relatively higher, particularly

> those to points west of the Missouri River, than the rates to Sioux City, Willmar, St. Paul, and the other gateways. In Appendix A hereto the rates and short-line distances to those gateways and to representative points in the destination territory are compared with the rates prescribed to the South Dakota points, using the first-class rates under the southwestern scale as a basis of comparison. The percentages of the scale rates indicate the respective levels of the rates on petroleum. The points in italics are representative of those to which defendants published rates in purported compliance with our instruction in the former report to adjust the rates to other points in proper relationship with those specifically prescribed to the key points. These rates became effective June 14, 1928. (R. 122–123.)

The December 1, 1931, report shows complainants in the Commission proceedings contended that the *1925 Midcontinent Oil Rates case* (R. 75) resulted in rates unjustifiably high, "particularly as compared with the rates prescribed from the same origins to points in South Dakota and to St. Paul, Paynesville, St. Cloud, Willmar, and Granite Falls, Minn." (R. 123). In answer to the contention of the Standard Oil Company (Indiana) that the relationship of the rates assailed to those from Casper, Wyo., should be considered in this proceeding, the Commission held that as such relationship had not been "brought in issue by the complaints",

they "will not be considered". (R. 121.) This holding was clearly right; otherwise the order would be attacked as having denied a full opportunity to be heard because the issues were broader than the complaints. Appellees' argument was overruled by the lower court in this language:

> It seems quite evident from the language of the report that the complainants before the commission urged the propriety of taking the South Dakota rates as a basis of comparison, while the railroads claimed that such rates afforded an improper basis because they were too low and for other reasons. It must, we think, be assumed, in the absence of the record upon which the report was based, that the commission was justified in reaching the conclusion which it evidently did reach, that the South Dakota rates, at the time of the hearing, represented reasonable maxima, and that they did therefore furnish a proper basis for determining the reasonableness of the rates assailed.
>
> The dissenting opinion of Commissioner Mahaffie indicates that in his opinion the report of the majority of the commissioners resulted from relating the assailed rates to the South Dakota rates which he considered too low to furnish a proper basis of comparison. * * *.
>
> It is true, as pointed out by the petitioners, that the commission had previously said that the rates to South Dakota were below reasonable maxima. That, however, would not foreclose the commission, at a later time,

from changing its mind and reaching another conclusion upon a different record. (R. 281.)

III

The last contention to be discussed is that the Commission's method of conducting the proceedings was arbitrary in that it denied various petitions made by the carriers for consolidation and further hearing upon a single record of all cases relating to the general level of the rates from the Midcontinent field to destinations in Western Trunk Line Territory, other than the destination territory involved herein. (R. 10–11.) The nature of the petitions for rehearing, consolidation, etc., is shown clearly in the lower court's opinion, and the basis for the present argument stated as follows:

> * * * This contention is based principally on the denial by the commission of the various petitions and requests by the carriers, namely, the petition to postpone the effective date of the order of March 5, 1928, and to reopen Midcontinent Oil Rates, 1925; to grant a further hearing upon a single record with respect to the level of rates from midcontinent field to destinations in Nebraska, Iowa, North Dakota, South Dakota, and Minnesota, denied by the order of February 11, 1929; the request that the hearing in Number 17304 set for Fargo on January 13, 1930, be postponed in order that

> that proceeding might be consolidated with the pending complaints attacking the relationships between the rates from the midcontinent field and the rates from Wyoming; the petition of January 3, 1930, asking for such consolidation and for the postponement of a hearing in Number 17304; the petition of January 14, 1930, to reopen Midcontinent Oil Rates, 1925, for further hearing with respect to rates prescribed from the midcontinent field to Lincoln and Omaha, Nebraska; Des Moines, Fort Dodge, Sioux City, and Mason City, Iowa; Sioux Falls, South Dakota; and St. Paul and Duluth, Minnesota; and to territory beyond such gateway points, and to consolidate with said proceeding the Wyoming complaints; the petition of February 3, 1932, to set aside or stay the effect of the order of December 1, 1931, and to grant a rehearing on account of changed conditions. (R. 278.)

With the exception of the holding that the Commission had erred in denying the carriers' petition for rehearing of February 3, 1932, to show changed conditions, because of which the order was enjoined, (R. 295) a proposition discussed by appellants in their original briefs, the lower court overruled the argument in the following language:

> We think that the refusal of the commission to combine with the proceeding challenging the reasonableness of the rates in North Dakota and northwestern Minnesota

> other proceedings relating to similar rates to other points in western trunk line territory was not so unreasonable as to justify the setting aside of the order complained of, and was within the discretion of the commission. The hearing with respect to the rates assailed might have shown that they were, in comparison with other rates, too high, or that the other rates were too low. If the commission reached the conclusion that the rates assailed were not too high, that would have ended the controversy. If it found them out of line with other rates which it considered reasonable, it could reduce them without disturbing the other rates. It had before it the complaints of certain shippers as to certain rates in a certain territory, and the carriers, we think, had no absolute right to require that other controversies affecting other shippers and other territories be injected. The denials by the commission of the petitions for consolidation were, we think, within its discretion. (R. 284.)

The only serious question in the case, as the District Court found, was whether the decision of this court in the *Grain case,* 284 U. S. 248, was controlling. (R. 284.) We have fully covered this question in our original brief, to which we refer the court.

It is respectfully insisted that the decree of the lower court should be vacated and the Commission's order reinstated.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932

No. 470

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL., APPELLANTS,

vs.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

BRIEF FOR APPELLEES.

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IN THE

Supreme Court of the United States

October Term, 1932

No. 470

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al.,

Appellants,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, et al.,

Appeal from the District Court of the United States for the District of Minnesota.

BRIEF FOR APPELLEES.

STATEMENT OF THE CASE.

The brief for the United States and Interstate Commerce Commission does not contain all that is material to the consideration of the questions presented, which include whether the Commission's order of December 1, 1931, is void *for any*

of the reasons presented by the record. Appellees contend that notwithstanding the contrary opinion of the specially constituted District Court, the Commission's order is void because of attempt by the Commission to exercise powers not possessed by it, and because of the arbitrary and unfair manner in which the proceedings were conducted. The District Court held this order invalid only for refusal of the Commission to grant the petition of the carriers for rehearing because of changed conditions. Consideration of these three questions requires a more complete statement of the facts than is contained in the brief for appellants.

(Note: Reference to sections of the Interstate Commerce Act throughout this brief are to the act to regulate commerce, approved February 4, 1887, as amended, and the pertinent portions thereof are set forth in the appendix, *infra* pp. 42-44).

The Proceedings Before the Commission.

The destination territory involved in this case, namely, North Dakota and that portion of Minnesota lying west of the line of the Great Northern Railway from Duluth, Minnesota, to Pipestone, Minnesota, is keenly competitive for the marketing of refined petroleum products as between the refiners and producers located in the midcontinent field in the Southwest and the producers and refiners of petroleum products in Wyoming and Montana. The volume of business done by the respective producing fields depends to a considerable extent upon the relationship between the freight rates here in question and the freight rates from Wyoming and Montana to the same destinations (R. 4, 112-114). Shipments of refined petroleum products to this destination territory are also made from a tank farm situated at Superior, Wisconsin, and from a pipe line head at St. Paul (R. 263). Appellees are the delivering lines for all of

this traffic and must maintain properly related rates from all shipping points.

For many years a subnormal and depressed adjustment of freight rates on refined petroleum products has obtained from the midcontinent field to Duluth, the Twin Cities and certain so-called gateway points intermediate thereto such as Willmar, Minnesota, Sioux Falls, South Dakota, and Sioux City, Iowa. These depressed rates are the result of pipe line competition from the oil fields in the Southwest to refineries in the vicinity of Chicago, Illinois (R. 26), and have been twice revised by the Interstate Commerce Commission for the purpose of removing undue prejudice, but without any attempt to fix maximum reasonable rates. *Midcontinent Oil Rates, 1915,* 36 I. C. C. 109; *Midcontinent Oil Rates, 1925,* 112 I. C. C. 421. Each of these revisions resulted in reductions in rates from the Southwest to Duluth, the Twin Cities and intermediate points, in order to relate them more closely to the rates to Chicago (R. 86). In a series of subsequent reports, the Commission consistently refused to accept any of the rates prescribed in these revisions as a proper standard for measuring the reasonableness of other rates, and affirmed them to be below the level of reasonable maximum rates.

Empire Refineries v. A. T. & S. F. Ry. Co., 136 I. C. C. 344, 346.

Caldwell & Taylor v. C. R. I. & G. Ry. Co., 144 I. C. C. 448, 449.

Petroleum and Its Products, 171 I. C. C. 286, 308.

Refined Petroleum Products in the Southwest, 171 I. C. C. 381, 414, 424.

The Commission continued of the same view in its report of December 1, 1931, in the case now before the Court (R. 127).

On account of the low level of the rates thus required from the Southwest to the Twin Cities and intermediate points, joint rates on refined petroleum products from the midcontinent field to destinations in South Dakota, North Dakota, and northwestern Minnesota, were originally made on a combination basis by adding to the low rates to the border or gateway points the local rates beyond, and deducting 5.5 cents per 100 pounds from the resulting combination in order to avoid the double application of increases applied during federal control to the separate factors (R. 77, 83). This method of making the rates to the territory in question was found not unreasonable by the Commission in *Codington County Oil Co. v. A. T. & S. F. Ry. Co.*, 53 I. C. C. 234, and *Independent Home Oil Co. v. Director General*, 59 I. C. C. 398 (R. 77, 84).

When the Commission conducted its investigation in *Midcontinent Oil Rates, 1925*, numerous complaints of undue prejudice brought by operators of petroleum refineries in the Southwest were heard together upon a consolidated record. One of the issues raised was the alleged unreasonable and unduly prejudicial character of the petroleum rates from the Southwest to destinations in northern Nebraska, South Dakota, North Dakota, and in Minnesota west of the line from Duluth to Sioux Falls. Certain interveners from North Dakota, who supported the complainants, contended that the method of constructing rates approved in the *Codington County Oil Co.* case and the *Independent Home Oil Co.* case was wrong in principle, and that in order to be reasonable, rates "must not only be reasonable in themselves but must be properly related to the rates to other points" (R. 43). The Commission stated that the record before it was inadequate to enable it to dispose of this issue; that the rates to South Dakota were under attack in another proceeding, known as No. 16309, *South Dakota In-*

dependent Oil Jobbers Asso. v. A. T. & S. F. Ry. Co., particularly in their relation to the rates to points in Iowa and southern Minnesota, and that "under the circumstances, it appears desirable to withhold specific findings in this report with respect to rates to this western territory, and accordingly these cases, in so far as they involve such rates, will be held open for further consideration in connection with No. 16309" (R. 44).

The complaint in No. 17304, *International Oil Co., et al. v. A. & S. Ry. Co., et al.*, the case now before the court, had been theretofore filed with the Commission and heard upon a separate record at Fargo, North Dakota in October, 1925 (R. 4, 5). This complaint alleged that the rates on petroleum and its products from Texas, Oklahoma, Kansas and Missouri to destinations in North Dakota and in Minnesota north and west of the line of the Great Northern from Duluth to Pipestone, Minnesota, were unreasonable (R. 76). There was no allegation of undue prejudice or unjust discrimination (R. 5), and complainants did not seek the prescription of any fixed *relationship* between the rates assailed and other rates.

On March 5, 1928, the Commission made and filed its report entitled "Midcontinent Oil Rates, 1925, Second Supplemental Report of the Commission" (139 I. C. C. 605, R. 75). This report deals separately with the issues in Nos. 16309 and 17304, and the issues of undue prejudice in the complaints which had been consolidated in *Midcontinent Oil Rates, 1925*.

Dealing with the complaint in No. 16309, the Commission found that "Complainants in No. 16309 distribute petroleum products in competition with distributors in northwestern Iowa, southwestern Minnesota and southeastern South Dakota who enjoy very much lower freight rates from the midcontinent field," and said "We are of opinion that rates on petroleum products from the midcontinent field to South Dakota may

properly be maintained on a higher relative level than the rates which we have prescribed to Sioux City, but that existing differences are not justified" (R. 79). Dealing with the complaint in No. 17304, the Commission recited the evidence and referred to the contentions of the carriers that the rates from Wyoming and Montana to North Dakota and Minnesota were made with relation to the rates from the base group in the midcontinent field, and that the latter rates should not be reduced because of the effect of such reductions upon the rates from Wyoming and Montana (R. 84), and also to the evidence of the carriers with respect to their unsatisfactory earnings from all traffic. The Commission prescribed reduced rates to the entire territory, effective June 14, 1928, and explained its action by stating that the reductions required were of the same nature and were a part of the same general readjustment as the reductions previously prescribed to Sioux City, Sioux Falls and the Twin Cities, which it said "had for their purpose the creation of a more consistent and reasonable relationship of rates as between those points and other points in western trunk line territory" (R. 86). The Commission further stated that it was "fully mindful of the revenue needs of these various carriers, but, as we have frequently said, lack of adequate revenue from operations as a whole affords no justification for unlawful rates on individual commodities" (R. 85).

The interested carriers, including appellees, were greatly dissatisfied with this report and order. On May 4, 1928, they petitioned the Commission to postpone its effective date, to reopen Nos. 16309, 17304, and *Midcontinent Oil Rates, 1925*, and to grant them a further hearing of said proceedings upon a common record in order to permit them to offer further evidence respecting the level of the rates to the gateways and other points in Nebraska, Iowa, and Minnesota, and to points

beyond the gateways in South Dakota, North Dakota and Minnesota. In this petition they offered to prove the serious effect the reductions required would have upon their revenues and earnings, their unsatisfactory financial condition, the effects of growing truck competition upon their other traffic, fostered by low rates on gasoline, and the propriety of adjusting the rate relationships deemed improper by authorizing them to increase the rates to the gateways instead of compelling them to reduce the rates to the territory beyond. This petition was denied by the Commission on February 11, 1929 (R. 7, 153, 248).

Following the establishment of the reduced rates from the midcontinent field required by the Commission, effective June 14, 1928, appellees proceeded to make corresponding reductions in the rates on petroleum and its products from Wyoming producing points to the same destinations in order to prevent a threatened diversion of traffic. These reductions were suspended by the Commission, and ordered cancelled after investigation and hearing in a proceeding entitled *Investigation and Suspension Docket No. 3148, Petroleum and Its Products from Points in Wyoming*, 153 I. C. C. 363, issued March 30, 1929, (R. 111). The Commission therein found that "The proposed rates from Casper are relatively lower, distance and transportation conditions considered, than the rates from the midcontinent field" (R. 113); that in fixing rates to South Dakota, North Dakota and western Minnesota from the midcontinent fields it had necessarily considered and passed upon the relationships between those rates and the rates from Wyoming, and that "*Where rates from various origin territories on the same commodities to common destinations served by the same carrier are fixed by us under section 1 of the act their relationship is necessarily involved*" (R. 116). (Italics ours.)

While the Investigation and Suspension proceeding above mentioned was pending, and on November 30, 1928, a distributor

of petroleum products at Jamestown, North Dakota, filed complaint with the Commission, docketed as No. 21737, attacking as unreasonable the rates on petroleum and its products established June 14, 1928, from the midcontinent fields to Jamestown, Buffalo, Valley City and Cleveland, North Dakota (R. 8). The claim was merely that the rates prescribed to these points were out of line with the rates contemporaneously prescribed to adjacent points (R. 122). It was heard at Jamestown, North Dakota, on March 6, 1929, and the record closed (R. 9). It was disposed of in the report of the Commission which is now before the court for review (R. 121).

Thereafter, on April 19, 1929, complainants in No. 17304 filed a petition for further hearing, alleging and offering to prove that to various points in North Dakota the shortest distances from the midcontinent field were over routes passing through Aberdeen or Roscoe, South Dakota, and that in arriving at the rates prescribed to North Dakota points, the Commission had disregarded the short line distances and the rates contemporaneously prescribed to intermediate South Dakota points, and had, in consequence, fixed rates which were unjustifiably high as compared with the rates prescribed to South Dakota points and to the gateways in Minnesota. This petition was granted by the Commission by order entered June 10, 1929, reopening the case for further hearing (R. 9, 249).

On September 16, 1929, the Standard Oil Company of Indiana, engaged in the operation of refineries at Casper, Wyoming, filed with the Commission a complaint alleging that the rates on petroleum and its products from Casper, Wyoming, to destinations in the states of North Dakota, South Dakota, Iowa, and Minnesota were and for the future would be unreasonable, in violation of section 1 of the Interstate Commerce Act, and *unduly prejudicial to complainant and unduly prefer-*

ential of producers and shippers located in the midcontinent field, in violation of section 3 of the Act. On September 19, 1929, a complaint presenting similar issues was filed with the Commission by the Public Service Commission of Wyoming. These complaints were docketed by the Commission as Nos. 22714 and 22733, respectively (R. 9, 10, 152, 249).

On December 12, 1929, appellees were served by the Commission with notice that No. 17304 was assigned for further hearing at Fargo, N. D., on January 13, 1930. They promptly applied to the Commission by letter (R. 118), and by formal petition filed with the Commission on January 3, 1930 (R. 11, 152, 249), requesting the Commission to consolidate Nos. 17304, 22714 and 22733 for hearing and decision upon a common record, and to postpone the hearing set for January 13, 1930, in No. 17304. These requests were denied by the Commission, and hearing was held beginning January 14, 1930, and the record closed January 15, 1930 (R. 233).

In addition to the last mentioned petition, appellees and their connections filed with the Commission on January 14, 1930, a petition requesting it to reopen *Midcontinent Oil Rates, 1925*, and to consolidate with it Nos. 22714 and 22733 and all other pending complaints involving rates on petroleum products to destinations in western trunk line territory, and to set the proceeding down for further hearing with respect to the rates to the key or gateway points such as Lincoln and Omaha, Nebraska, Des Moines, Fort Dodge, Sioux City and Mason City, Iowa, Sioux Falls, South Dakota, and St. Paul and Duluth, Minnesota, and also with respect to the rates to the territory beyond such gateway points (R. 12, 249). By order entered April 14, 1930, the Commission denied this petition (R. 250). The Commission thereafter proceeded with the

investigation of the complaints in Nos. 22714 and 22733, and held a hearing thereon at Chicago, Illinois, which began on April 23, 1930, and was concluded on May 1, 1930 (R. 265). At the time this is written (January 25, 1933), no report has been made by the Commission, presumably because the rates to be prescribed from Wyoming are dependent upon the outcome of this case.

The Report and Order in Question.

On December 1, 1931, the Commission made and filed the Report and Order which is the subject of this case, further reducing the rates in question. Three Commissioners dissented from the Report. Commissioner Mahaffie, dissenting, said (R. 130):

> "Revision of rate adjustments upon such precedents as the majority here use and the condemnation of rates previously prescribed as reasonable usually result, as they result here, in rates so low as to make unwarranted reductions in carrier revenue."

The present rates and the reduced rates prescribed to become effective March 15, 1932, are shown in columns (B) and (F) respectively of Appendix B to the Commission's report (R. 132-144). The mathematical average of the reductions prescribed to the 368 destinations named in Appendix B is 7.5 cents per 100 pounds, and the average percentage reduction is 10.2 per cent. The resulting loss of revenues to the participating carriers approximates $600,000 annually (R. 18), of which about $130,000 would be sustained by the Great Northern (R. 261), and about $98,000 by the Northern Pacific (R. 257). The following table shows to representative destinations the rates from the base group which were in effect prior

to June 14, 1928, the rates prescribed by the Commission effective on that date, and the rates required by the order here under review:

To	Old Rate (R. 87)	Rate Prescribed June 14, 1928 (R. 87)	Rate Prescribed March 15, 1932 (R. 132)
Fergus Falls, Minn.	64	61	55
Wadena, Minn.	62.5	62.5	55
Fargo, N. D.	70	62	57
Grand Forks, N. D.	75.5	70	63
Devils Lake, N. D.	83.5	74	70
Jamestown, N. D.	81	76	63
Minot, N. D.	92	81	75
Bismarck, N. D.	94.5	82	70
Dickinson, N. D.	107	88	78

The order is based on the following formal finding (R. 129):

> "Upon the whole record now before us, we find that the rates assailed prior to June 14, 1928, were not unreasonable; that those applicable on and after that date were unreasonable only in the instances and to the extent they exceeded the rates shown from Group 3 in column H of Appendix B hereto, plus or minus the differentials from other origin groups to Willmar and St. Paul, Minn.; and that on and after the effective date of our order for the future, the rates assailed will be unreasonable to the extent they exceed or may exceed those shown from Group 3 in column F of Appendix B, plus or minus said differentials from other origin groups."

The finding of past unreasonableness means only that in a few instances the cariers failed to comply fully with the instructions in the Commission's prior report to revise the rates to all points in proper relation with those prescribed to the key

points (R. 128), and is merely a construction by the Commission of its prior order. The rates which the Commission indicates should have been published are now in effect, and are not questioned by appellees.

The apparent conflict between the Commission's formal finding that the rates in effect prior to June 14, 1928, were not unreasonable and its equally formal finding that lower rates established on that date would be unreasonable after March 15, 1932, unless substantially reduced, was characterized by complainants in a petition for rehearing of the question of reparation filed February 13, 1932 (R. 154), as "a most remarkable paradox" (R. 230), because the record before the Commission did not contain a scintilla of evidence to justify a finding that a different and higher level of rates was warranted prior to June 14, 1928, or after that date than for the future (R. 239). But the Commission's finding that the rates would be unreasonable for the future did not mean that the Commission deemed them inherently unreasonable or excessive for the service rendered. This is made evident by the following findings and recitals in the report:

1. The Commission condemned the rates in question for the future, solely because of their relation to the rates previously prescribed from the midcontinent field to South Dakota and the gateway points in Minnesota. Under the heading "Rates for the Future" it said (R. 126):

> "The record on further hearing demonstrates the necessity of a further revision of the rates assailed to bring about a reasonable and consistent adjustment. The present rates grade up too rapidly beyond the gateways on the eastern border of the destination territory and as the state line is crossed from South Dakota into North Dakota; * * * the rates to North Dakota especially are on too

high a level compared with the rates prescribed to South Dakota; and those from Kansas City to North Dakota are generally higher than the Wyoming-Montana scale recently prescribed in Rates on Petroleum and its Products in Montana, 176 I. C. C. 707."

In describing the nature of the rates prescribed for the future, and their percentage relation to certain constructive first class rates, the report continues (R. 127):

"The proposed rate from Group 3 to Fargo is 22.5 per cent, which is the same as the average under the rates prescribed to points in eastern South Dakota; that proposed to Jamestown, 980 miles, is 25 per cent and the same as that previously prescribed to Mobridge, S. Dak., 974 miles; and that proposed to Bismarck, 1055 miles, is 26.5 per cent and the same as that previously prescribed to Lemmon, S. Dak., 1073 miles. These rates will not only be in harmony with those previously prescribed to South Dakota, but considering the respective territories through which the traffic moves, also in line with those recently prescribed from Wyoming points to Montana points in Rates on Petroleum and its Products in Montana, supra."

The Commission's report in *Rates on Petroluem and its Products in Montana,* 176 I. C. C. 707, shows that the case was submitted on July 1, 1931, and decided July 13, 1931, almost exactly 18 months after the record in No. 17304 was closed. The Commission in its answer denies that it considered anything outside the record in reaching its conclusions (R. 153), and it seems apparent that the rates prescribed in the Wyoming-Montana case had no real bearing on the determination of the reduced rates in controversy, for the appendixes to the Commission's report in that case (171 I. C. C. 741, 742) show that the maximum reasonable rates therein prescribed were made uniformly 32 per cent of the first class rates prescribed

by the Commission for application in western trunk line zone III and subzone III, whereas the rates prescribed in the instant case range from 20 per cent to a maxiumum of 29.5 per cent, and for the most part are about 24 per cent of the first class rates under the Southwestern scale used by the Commission "simply as a convenient yardstick and not on the assumption that it would be proper for application to all points in the destination territory" (R. 127). Shortly after the hearing in the court below in this case, the Commission, by public announcement, reopened the Wyoming-Montana case for further hearing in respect of changed economic conditions affecting the level of the rates, a fact of which the court can probably take judicial notice.

2. The Commission disclaimed any opinion or belief that the rates prescribed in its prior reports from the midcontinent field to the gateways or to points in South Dakota were maximum reasonable rates (R. 125).

Commissioner Mahaffie, dissenting from the majority says (R. 130): "The adjustment here required is based very largely upon our previous findings in the Midcontinent Cases, which we have repeatedly stated required rates below reasonable maxima." No language was placed in the majority report to indicate that the majority took any different view of the matter.

The report contains no finding or recital of any undue prejudices or preferences or unjust discriminations, requiring the revision prescribed, nor any finding or recital to indicate that there was any commercial necessity for such a revision. It refers to the contentions of appellees on this point and disposes of them summarily, as follows (R. 126):

> "Defendants contend that the rates assailed should not be measured by the rates prescribed to South Dakota be-

> cause the traffic here considered does not normally move through that state; because the rates thereto bear no necessary relation to those to North Dakota; and because they are unduly low. The first two grounds relied upon were not recognized in recent decisions in which we prescribed a uniform level of rates on traffic from the Southwest to the eastern sections of both states."

The Commission found as a fact that the principal routes that move the bulk of the traffic in question are through St. Paul and not through South Dakota (R. 123), and that the lines performing the service to the Twin Cities handle the traffic in train loads to that point (R. 126). But in relating the assailed rates to the South Dakota rates, the Commission used the mileages over the short routes through South Dakota instead of the mileages over the longer routes customarily used in handling the traffic (R. 87, 132).

In making this decision the Commission put out of view and refused to consider the relationship of the assailed rates to the competitive rates to the same destinations from other producing fields. The report contains the following statement (R. 121):

> "The Standard Oil Company (Indiana) also intervened, taking the position that the relationship of the rates assailed to those from Casper, Wyo., should be considered in this proceeding. That relationship is not brought in issue by the complaints, however, and will not be considered."

Defendants' comparisons between the assailed rates and those from Wyoming were rejected with the statement that "These are not determinative of the issue in the absence of a showing that the scales used for comparative purposes accurately reflect the difference in transportation conditions" (R. 125). Thus, instead of *investigating* these relationships, and reaching some *conclusions* thereon, the Commission dismissed the sub-

ject from consideration and left it for subsequent determination in the proceedings pending on the complaints of the Standard Oil Company and the Public Service Commission of Wyoming in Nos. 22714 and 22733, which it had refused to consolidate with No. 17304. The following table prepared from tables contained in the several reports of the Commission (R. 117, 132) shows the rates from Casper, Wyoming, to representative points as compared with the present rates and those required by the Commission's order from the base group in the midcontinent field:

	From Casper		From Group 3		
				Present	Prescribed
To	Miles	Rate	Miles	Rate	Rate
Fargo, N. D.	794	70	990	62	57
Grand Forks	872	74.5	1068	70	63
Jamestown	766	70	980	76	63
Minot	782	70	1141	81	75
Bismarck	776	70	1055	82	70
Dickinson	661	70	1170	88	78

Changed Conditions and the Petition for Rehearing on Account Thereof.

After the close of the record before the Commission on January 15th, 1930, economic conditions and transportation conditions in the United States changed radically. In a report issued October 16, 1931 (*Fifteen Per Cent Case, 1931*, 178 I. C. C. 539) the Commission recited the changes (R. 185), and found that the changed conditions exerted a profound influence on railroad rate policies (R. 199), and said (R. 200): "So far as rates are concerned, it is clear that the present structure has developed under principles and theories which gave no thought to the competitive agencies of transportation which

now exist. * * * It is evident that the traffic departments must give new thought to the rate structure in the light of existing conditions."

These changed conditions did not immediately become apparent to appellees but early in 1931 they became sufficiently clear to require some action. Appellees did not at once apply to the Commission for a reopening of No. 17304 for further hearing with respect to such changed conditions. The Commission had consistently refused to consider their general financial situation in this proceeding, upon the ground that "lack of adequate revenue from operations as a whole affords no justification for unlawful rates on individual commodities" (R. 85), and had denied every petition and request presented by them, and it was unlikely that a petition for further hearing would be granted. Appellees and other railroads in the United States accordingly pursued what they believed to be the only practical remedy available to them, and on June 17, 1931, filed a petition with the Commission for an emergency increase of fifteen per cent in all freight rates and charges. They therein contended that in a proceeding involving the general level of all rates, the revenue consideration was necessarily paramount and controlling (R. 177). By its report issued October 16, 1931, in *Fifteen Per Cent Case, 1931*, above mentioned, the Commission denied this increase, holding that the law had not made revenue needs the paramount and controlling factor in the determination of a reasonable general level of rates (R. 180), that a 15 per cent increase in all freight rates and charges would increase revenues only temporarily, if at all, and would eventually harm rather than help the railroads, and that such an increase would raise the rates on many kinds of traffic, particularly products of agriculture and livestock, above a just and reasonable level (R. 192). The Commission offered for the consideration of the

railroad executives a substitute plan for small increases in the rates on certain groups of commodities, conditioned upon the pooling of the resulting revenues, such increases to expire on March 31, 1933 (R. 193, 194). The condition as to pooling was not acceptable to the railroads, and in a supplemental report issued December 5, 1931, this condition was withdrawn upon the understanding that the railroads would put in effect their own plan for marshalling the proceeds and making loans therefrom to needy carriers (R. 204 et seq.). The increase authorized on refined petroleum products was one cent per hundred pounds, to expire March 31, 1933, unless extended by the Commission.

The temporary rate increases thus authorized were not intended by the Commission as a full discharge of the duty imposed upon it by section 15a (2) of the Interstate Commerce Act. The Commission said that it felt justified in endeavoring by an emergency rate increase to provide revenue sufficient only to meet actual interest charges, but not justified in doing more under existing conditions because of the doubt as to whether the traffic generally could stand greater increases (R. 194). It expressed the belief that the traffic departments of the railroads should study their rate structures with a view to making such changes in the rates on particular kinds of traffic as would be likely to increase their revenues, saying that it was likely that there were a considerable number of rates which could reasonably be advanced substantially even under present conditions (R. 192).

The report and order in the instant case was not served on appellees until about December 21, 1931 (R. 12). On February 3, 1932, they filed with the Commission on behalf of themselves and their connections a petition dated January 30, 1932, asking the Commission to vacate and set aside, or postpone the

effective date of the order, and to grant them a rehearing and reconsideration thereof, and to reopen said proceeding for the taking of further evidence, in order to permit them to show changed conditions since the record was closed (R. 17, 146 et seq.).

The petition alleged and offered to prove that since the record was closed the principal carriers affected by the order had suffered a decline of 32.48 per cent in freight traffic and 37.02 per cent in passenger traffic, and a decline of 33 per cent in gross revenues and 60 per cent in net revenues; that in 1931 their combined net incomes were insufficient to meet their fixed charges by nearly $6,000,000.00; that the decline in traffic and revenues was due to a change in economic conditions and in methods of transportation and distribution, as a result of which their freight rate structures were undergoing many revisions, including rate reductions to meet the competition of other forms of transportation, which would necessitate rate increases on other traffic able to pay increased rates; that the traffic affected by the order was moving freely and had increased in volume under the existing rates, due, perhaps to the increased activity of motor trucks; that in the opinion of petitioner's traffic officers said rates could reasonably and profitably be advanced, even under existing conditions, without unduly burdening the traffic or diverting it to other means of transportation, and that if the order should become effective it would directly reduce the gross and net revenues of the interested carriers by about $600,000.00 per year, and would indirectly reduce the gross and net revenues of appellees by further large amounts. The petition further alleged that the reductions required by the order were based on the existence of lower rates to South Dakota and gateways on the eastern border of the destination territory; that said rates were prescribed by the Commission

upon records closed during the year 1925; that the traffic and transportation conditions existing in 1925 and prior years were wholly different from those existing now, and that under present conditions said rates were unduly and unreasonably low and should be increased.

Complainants in No. 17304 filed a reply to this petition (R. 241 et seq.). The facts alleged in the petition were not questioned or controverted in this reply. It was contended simply that the petition should be denied because: (1) the case did not involve the entire rate structure of all the carriers in a major rate group, but affected "particular rates" only; (2) neither the inadequacy of the general revenues of the carriers nor changed conditions affecting those revenues was relevant or material to the question of the reasonableness of these rates, and (3) the Commission had fully provided for the revenue needs of the carriers through the temporary rate increases authorized in *Fifteen Per Cent Case, 1931,* and if any further relief were required it should be accorded by the application of similar measures to the whole fabric of rates. On March 7, 1932, the Commission entered an order denying the petition of February 3, 1932, in its entirety (R. 154).

The truth of the facts alleged in the petition for rehearing filed with the Commission is not questioned in this case. The bill alleges (par. XXIII, R. 17) that "Each and all of the facts alleged in said petition are true." This allegation is not denied in the Commission's answer, which merely refers to the reply to the petition filed by complainants (R. 154). It is tacitly admitted in the answer of the United States, which alleges that the truth thereof is irrelevant and immaterial in this case (R. 252). The effect of the changed conditions in the territory in question upon the freight revenues of Northern Pacific Railway Company, one of the important delivering lines, was shown

by the affidavit of F. C. Sharood (R. 258, 259) upon the hearing in the court below, and that court found that "The general effect of the change in economic conditions upon the revenues of these and other carriers is a matter of common knowledge" (R. 294), and that "a record closed January 15, 1930, was not representative of conditions existing in March, 1932" (R. 295).

SUMMARY OF THE ARGUMENT.

I.

The decree below enjoining the Commission's order because of its refusal to accord the carriers a hearing in respect of changed conditions was manifestly right. The arguments of appellants to the contrary misconceive the principle applied in *Atchison, Topeka & Santa Fe Railway Company v. United States,* 284 U. S. 248. The changed conditions requiring a rehearing in the instant case were not merely reduced carrier revenues, but were economic and transportation conditions which were relevant and material to the determination of a maximum reasonable level of rates on refined petroleum products from the entire southwestern portion of the United States to the large destination territory in question. Moreover, the decline in carrier revenues, if not otherwise relevant, was made relevant and material in this case by the conclusions reached by the Commission in *Fifteen Per Cent Case, 1931.*

The action taken by the Commission in *Fifteen Per Cent Case, 1931,* did not justify the Commission in refusing to grant a rehearing in respect of changed conditions occurring since the close of the record in this case, because the Commission had not undertaken to determine what level of rates might reasonably be maintained on refined petroleum products in the territory in question in relation to the rates contemporaneously maintained on other commodities, and the action taken by the Commission in *Fifteen Per Cent Case, 1931,* did not purport to be fully responsive to the needs of the carriers for increased revenues.

Appellees were not guilty of such laches as deprived them of their right to a rehearing in respect of changed conditions, be-

cause they moved for such rehearing with reasonable promptness after receiving notice of the order in this case, and had previously been pursuing their rights with diligence in *Fifteen Per Cent Case, 1931.*

II.

The order is void because the Commission misconceived its powers in the premises and attempted to exercise a power not possessed to reduce rates which were not unreasonable or unlawful, in the interests of a supposed harmony in the petroleum rate structure. The Interstate Commerce Act does not require absolute uniformity in rates, and a rate which is not found to be violative of the sections of the Act prohibiting unjust discriminations and undue prejudices and preferences cannot be condemned as unreasonable merely because it is out of harmony with other rates which are not themselves a proper standard of maximum reasonable rates. The rates assailed had been prescribed by the Commission, and could not lawfully be condemned as unreasonable by mere comparison with rates prescribed in the same report to other points, in the absence of a specific finding that the latter rates were a proper standard of maximum reasonable rates. No such finding was made by the Commission.

III.

If the order was otherwise within the Commission's power to make, it is void because the hearing that was accorded the carriers was inadequate and manifestly unfair. The Commission's refusal to reopen and rehear the issues in the related cases, with which this case was originally decided, involving the rates to South Dakota and the gateways, and its refusal to consolidate

and hear or consider upon the same record the issues pending before it as to the relationship between the assailed rates and the rates from Wyoming to the same destinations, was in substance and effect a refusal to consider the intrinsic reasonableness of the rates assailed.

ARGUMENT.

I.

THE DISTRICT COURT DID NOT ERR IN FINDING AND HOLDING THAT THE COMMISSION EXCEEDED ITS POWERS IN DENYING THE PETITION FOR REHEARING BECAUSE OF CHANGED CONDITIONS, FILED FEBRUARY 3, 1932.

(a) *The Circumstances Here Present do not Differ Materially from Those Considered In Atchison, Topeka & Santa Fe Railway Company v. United States,* 284 U. S. 248.

Appellants and interveners seek to distinguish this case from *Atchison, Topeka & Santa Fe Railway Company v. United States,* 284 U. S. 248, hereinafter called the Grain Case, because of differences in the nature of the proceeding before the Commission, the extent of the rate adjustment affected by the order, the number of carriers complaining, and the amount of revenue involved. In their attempts thus to distinguish the facts in this case, appellants and interveners mistake the principles upon which the Grain Case was decided and the grounds on which the rehearing in this case was sought. Their fundamental error consists in supposing that the only change in conditions alleged either in this case or in the Grain Case was the decline in the general revenues of the carriers since the beginning of the present depression.

The change in conditions which was set forth in the petition for rehearing in this case, and which made necessary a rehearing in the Grain Case, was not a mere decline in carrier revenues but was a changed economic order of things, accompanied by a radical change in methods of carrying on the com-

merce of the country, a shifting of traffic to new modes of transportation and distribution, and a serious decline in the traffic of the railroads. The case of *Interstate Commerce Commission v. Union Pacific Railroad Company*, 222 U. S. 541, and other cases cited in the brief of the interveners in support of the proposition that the adequacy or inadequacy of the earnings of a railroad or a group of railroads from the entire body of rates is not relevant in an inquiry as to the reasonableness of particular rates, are wholly beside the point. Counsel for interveners are so far misled as to urge that the decision of this Court in the Grain Case was wrong and should not be followed.

The rule announced in the Grain Case was based on the fundamental and self-evident proposition that the reasonableness of railroad rates must be determined by the facts as they exist when it is sought to put such rates into operation, and that, since a fair hearing is a fundamental requirement to the validity of any order reducing railroad rates, no such order can be sustained if based solely upon a hearing which related to conditions which had been radically changed, and a hearing suitably requested which would have permitted the presentation of evidence relating to existing conditions was denied. The Court held that a petition for rehearing on the ground of changed conditions which had supervened since the record before the Commission was closed, is not an ordinary petition, the granting or denial of which is within the Commission's discretion, but is in the nature of a supplemental bill which, if well founded, is not within the permitted range of the Commission's discretion to deny.

The petition for rehearing of February 3, 1932, in this case was manifestly the same kind of petition as was considered and held to be in the nature of a supplemental bill in the Grain Case. It was not addressed to the discretion of the Commission. It

asserted that whatever might be the view of the order when made and upon the record as made, a changed economic condition demanded reopening and reconsideration. Whether it was well founded or not depended upon the truth and materiality of the facts asserted, but if it was well founded, the Commission had no alternative but to grant it.

No question was made then or is made now as to the truth of the allegations presented in the petition for rehearing. The Commission's denial of the petition could therefore mean only that the admitted change in conditions which had occurred since the record was closed, was regarded by the Commission as of no consequence in the adjustment of the rates to which the order related. Such a view of the order is manifestly untenable and the denial of the petition was plainly error.

There can be no real question as to the relevancy and materiality of the changed conditions asserted. The most outstanding fact alleged is the decline in traffic upon the lines of the principal carriers affected by the order, amounting to 32.48 per cent in freight traffic and 37.02 per cent in passenger traffic. It is well settled that, in determining just and reasonable rates, consideration must be given to density of traffic. *Sames, Moore & Company v. A. T. & S. F. Ry. Co.*, 113 I. C. C. 501 (506). No rule is more firmly grounded in reason or more universally recognized than that the greater the tonnage to be transported, the lower the rate of freight charges therefor. *Tift v. Southern R. Co.*, 138 Fed. 753.

The petition for rehearing further alleged that there had been a change in economic conditions and in methods of transportation and distribution, as a result of which the freight rate structures of the carriers affected by the order were undergoing many revisions, including rate reductions to meet the competition of other forms of transportation; that these revisions

would necessitate rate increases on other traffic able to pay increased rates; that the traffic affected by the order was moving freely and had increased in volume under the existing rates, and that these rates could reasonably and profitably be advanced, even under existing conditions, without unduly burdening the traffic or diverting it to other means of transportation. These claims, if true, were necessarily relevant and material to the determination of the reasonableness of the rates affected by the order. It has long been recognized in this country that what the traffic will reasonably bear is one of the considerations affecting the establishment of freight rates, and that the existing rate structure of the railroads has been developed largely on this principle. When, by reason of a radical change in economic conditions, the rates on many classes of traffic become more than the traffic will bear because of the competition of new agencies of transportation, it is plain that the whole rate structure must undergo revision upon new and different principles. This was plainly recognized by the Commission in *Fifteen Per Cent Case, 1931*, 178 I. C. C. 539 (R. 199-200), and the Commission there found that it was "evident that the traffic departments must give new thought to the rate structure in the light of existing conditions." In view of the expressions of the Commission in *Fifteen Per Cent Case, 1931*, it is difficult to understand the process of reasoning by which the Commission concluded, if it did so conclude, that the changed conditions asserted in this case were not relevant or material to its order.

It is argued in the brief for appellants that this Court could not have intended by its decision in the Grain Case to require the Commission to reopen and rehear every case heard, either in whole or in part, before the full effects of the depression became evident, and that the Court must have intended that a

discretion was left in the Commission as to what cases should be reopened for the purpose of bringing the records down to date. It is manifestly unsound to assert that any discretion was left in the Commission with respect to petitions for rehearing in the nature of supplemental bills on the ground of changed conditions. The granting or denial of such petitions obviously depends upon the determination of questions of law and fact and not upon discretion. But it does not follow from this that every such petition must be granted by the Commission. It may well be that in the many cases where the Commission has prescribed a single rate or a few rates upon records closed before the full effect of the present depression became evident, the change in conditions will have no material bearing on the conclusions reached by the Commission or the order made, because the rates dealt with are merely an insignificant portion of a large adjustment of rates. The present case, however, is not of that character. The Commission was not dealing with a single rate or a few rates, but with a large body of rates from the entire Southwest to a large and clearly defined destination territory. The Commission's disposition of these rates did not affect them alone, but necessarily affected another large body of competitively related rates from points in the states of Wyoming and Montana, and from Superior, Wisconsin, and the Twin Cities to the same destination territory.

The question before the Commission for determination was essentially the level of maximum reasonable rates on refined petroleum products from the entire Southwest to a large territory embracing North Dakota and South Dakota, and portions of Minnesota and Iowa. It is thus apparent that the issues before the Commission related to rates on a major description of the traffic of the carriers in a vast territory, and were of such substantial character that a record which was closed in Jan-

uary, 1930, could not reasonably be regarded as representative of conditions existing in March, 1932. The differences between this case and the Grain Case are mere differences of degree which do not affect or alter the principles applicable.

There is a further consideration. It is true that the earnings of the carriers from their entire body of rates sheds little light on the question whether the rate on a particular article is reasonable. But section 15a (2) of the Interstate Commerce Act requires the Commission, in the exercise of its power to prescribe just and reasonable rates, to initiate, modify, establish or adjust such rates so that the carriers (as a whole or by rate groups or territories) will earn a fair return upon the aggregate value of their properties held for and used in the service of transportation. The Commission has only reasonable latitude "to modify or adjust any particular rate which it may find to be unjust or unreasonable." Whether the duty enjoined by section 15a (2) is to be performed by separate adjustment of particular groups of rates or only by adjustment of the whole body of rates at one time is not made clear. In *Fifteen Per Cent Case, 1931*, the Commission found that under existing conditions its duty could not practicably be performed by consideration of the whole body of rates, but that separate consideration had to be given to the justness and reasonableness of individual rates (R. 178), and it advised the railroads to study their rate structures with a view to making such changes in the rates on particular kinds of traffic as would be likely to increase revenues (R. 192). By this action, the Commission made the question of general carrier revenues a relevant and material consideration in the investigation of individual rates, wherever the scope of the inquiry might have a substantial effect upon the revenues of the carriers. This is plainly such a case, and the Commission cannot justify its refusal to consider the effect of

its order upon the revenues of the carriers and the relation of the rates in question to railroad revenues.

(b) *The Action Taken by the Commission in Fifteen Per Cent Case, 1931, did not Relieve it of the Duty to Rehear this Case in Respect of Changed Conditions.*

Appellants and interveners rely largely upon the contention that because in *Fifteen Per Cent Case, 1931,* the Commission permitted increases of one cent per 100 pounds in all rates on gasoline and refined petroleum oils, the Commission was relieved of the necessity of granting a rehearing of an order reducing substantially a large body of rates on gasoline and refined petroleum oils. The District Court held that if the Commission did take into consideration in deciding the present case the changed economic conditions which had been disclosed in *Fifteen Per Cent Case, 1931,* and the increases there authorized on account thereof, and was of the opinion that the order which it had made in this case was a fair and proper order, taking these conditions into consideration, such opinion on the part of the Commission was not the equivalent of a hearing because it gave no opportunity to the carriers to present evidence or arguments (R. 286). The Court was obviously right. The report of the Commission in *Fifteen Per Cent Case, 1931,* expressly states that "in such a general rate proceeding as this, involving primarily revenue considerations, we cannot undertake to consider the justness and reasonableness of individual rates." Obviously, a hearing in which the Commission could not undertake to consider the justness and reasonableness of individual rates cannot serve as a substitute for a fair hearing in a proceeding in which the Commission undertakes to reduce substantially individual rates.

If in the instant case the Commission had undertaken to prescribe rates on petroleum and its products, which would impose on that traffic in relation to the rates contemporaneously maintained on other commodities and classes of traffic a fair share of the transportation burden, and if in *Fifteen Per Cent Case, 1931*, the Commission had undertaken to adjust the general level of all rates so as to enable the carriers to earn a fair return upon the aggregate value of their properties, there might be force to the contention that the Commission was not obliged to grant a rehearing of the present case because of changed conditions. But the Commission did neither. It adjusted the rates in issue solely in relation to other rates on refined petroleum products which it had theretofore uniformly held to be below the level of maximum reasonable rates. In *Fifteen Per Cent Case, 1931*, it authorized certain admittedly inadequate and insufficient temporary increases in certain selected rates, and relegated the carriers to a study of their rate structures for the purpose of locating rates on particular kinds of traffic which might reasonably be increased in the interests of increased revenues. The contention that such action resulted in according the carriers a fair hearing in respect of existing conditions material to the rates here in issue is manifestly without any support in the facts.

(c) *Appellees were not Guilty of Laches Justifying Denial of a Rehearing in Respect of Changed Conditions.*

There is no basis here for the claim that because appellees did not apply for a rehearing of this case upon the ground of changed conditions early in 1931, and before the order of December 1, 1931, was made, they were barred by their laches from demanding a rehearing in respect of changed conditions. The District Court disposed of this contention by holding that

"an order which has the effect of reducing the revenues of the petitioners substantially does not affect them alone but is a matter of public interest; and if the order reducing the rate is wrong or if it was made upon a record which does not now justify its existence, or if the carriers were denied a fair hearing, it should be set aside, not only in the interest of the carriers, but in the public interest as well" (R. 286). In addition to this obviously sound proposition, it is plain that appellees are not chargeable with laches. They, with other railroads in the United States, diligently pursued what appeared to be the most practical remedy for the plight in which they found themselves as a result of the changed economic conditions when they applied to the Commission in June, 1931, for authority to make a fifteen per cent increase in all freight rates and charges. They failed to obtain the relief sought. It cannot be said, however, that their pursuit of that remedy and their failure to apply to the Commission for a rehearing in the present case before *Fifteen Per Cent Case, 1931* was finally decided operated to the prejudice of the complainants in this case or constituted an acquiescence in the determination of reasonable maximum rates on the traffic involved upon the conditions of 1929.

Mere lapse of time in asserting a right does not constitute laches. It is essential that there be also acquiescence in the alleged wrong or lack of diligence in seeking a remedy. Nor does failure to pursue the appropriate remedy, though well known, establish laches where there has been due diligence and the other party was not prejudiced by the delay. *Southern Pacific Company v. Bogert*, 250 U. S. 483.

In view of the magnitude of the rate adjustment affected by the order and the number of carriers whose interests had to be consulted, appellees proceeded with reasonable promptness in filing on February 3, 1932, their petition for rehearing of the order served on them on December 21, 1931.

II.

THE DECREE IS RIGHT AND SHOULD BE AFFIRMED FOR INVALIDITY OF THE COMMISSION'S ORDER UPON THE OTHER GROUNDS ALLEGED IN THE BILL.

The petition filed in the District Court alleges among other things that the Commission's order is void because the report shows on its face that the power which the Commission assumed to exercise in this case was not the power to fix maximum reasonable rates or to remove unjust discriminations or undue prejudices, but was a power, not possessed, arbitrarily to reduce otherwise lawful rates for the purpose of bringing about what it conceived to be reasonable and consistent relationships between the rates in issue and other rates not brought in issue, and because the hearing accorded the carriers was inadequate and manifestly unfair by reason of the denial of the various petitions of the carriers for enlargement of the investigation so as to permit of adequate consideration of the reasonableness and propriety of the rates assailed (R. 13). The District Court found and held that it did not sufficiently appear from the report that the Commission had disregarded the reasonableness of the rates as such, and that the denials by the Commission of the petitions for consolidation of this proceeding with other proceedings were within its discretion. In reaching these conclusions, we think the court failed to give adequate consideration to the circumstances attending the Commission's investigation and decision of the issues presented and that the order should have been held void on these grounds as well.

It is clear that appellees may urge these contentions here in support of the decree, although they have taken no cross appeal.

United States v. American Ry. Express Co., 265 U. S. 425, 435; *Langnes v. Green*, 282 U. S. 531, 538.

(a) *The Commission's Order is Void Because of its Attempt to Exercise a Power not Possessed by it Arbitrarily to Reduce Otherwise Lawful Rates Because of their Relation to Other Rates not in Issue Which were not a Proper Standard of Maximum Reasonable Rates.*

The Commission's report shows that the reductions ordered were required solely because the rates assailed were deemed not properly related to rates previously prescribed to South Dakota and the gateways. The standard of measurement used to condemn the assailed rates was the percentage relation of the South Dakota rates to a scale of first class rates applied to the mileages over the shortest possible routes to the destination territory involved, and not over the routes over which the traffic in issue is usually moved. The rates to South Dakota thus used as the standard of measurement had been prescribed by the Commission in the same report as the rates which were condemned, and obviously, had no more solid foundation as a standard of reasonableness than the rates which were condemned. Neither set of rates had been prescribed by the Commission with a view to establishing maximum reasonable rates, but had been established solely for the purpose of creating a more consistent and reasonable relationship of rates as between those rates and depressed competitive rates to other points (R. 86). It is self-evident that a mere comparison of the rates prescribed to South Dakota with those prescribed in the same report to North Dakota and northwestern Minnesota would prove nothing with respect to the reasonableness of either set of rates. The rates assailed would tend to show that the rates prescribed to South Dakota were too low, while those to South Dakota

would equally tend to prove that the rates assailed were too high. Both might be too low because compelled by conditions over which the carriers had no control. *Louisville & Nashville Railroad Company v. United States*, 238 U. S. 1, 12.

In its report the Commission did not set up any standard of maximum reasonable rates by which to judge of the reasonableness of either set of rates and it made no finding that the rates previously prescribed to South Dakota or to the gateways were maximum reasonable rates, or a proper standard thereof. One of the dissenting Commissioners expressly stated that the Commission had repeatedly stated that the rates required by the Commission in its prior reports in the Midcontinent cases were below reasonable maxima, and no language was placed in the majority report to indicate that the Commission otherwise regarded the rates prescribed to South Dakota and the gateways. Under these circumstances, it seems self-evident that the power which the Commission undertook to exercise in making the order here in question was not the power to fix maximum reasonable rates under the standards of the Interstate Commerce Act. It is not claimed on behalf of the Commission that the power sought to be exercised was the power to remove unjust discriminations or undue prejudices, because the Commission made no findings pertinent thereto.

The court below held that it must be assumed in the absence of the record upon which the report was based that the Commission reached the conclusion that the South Dakota rates at the time of the hearing represented reasonable maxima and furnished a proper basis for determining the reasonableness of the rates assailed (R. 281). It said: "While it may be true here that the Commission overlooked the question as to whether the rates prescribed by it were intrinsically unreasonable, we do not think that that sufficiently appears from the face of the

report, and the Commission denies that it failed to consider that factor." The view thus taken by the District Court, we respectfully submit, is not warranted by the record in this case. In view of the expressions of the Commission to the contrary in the report prescribing the rates to South Dakota and in subsequent reports, and in view of the Commission's repeated refusals to reopen and rehear the question of the reasonableness of the South Dakota rates, it cannot legitimately be assumed that the Commission changed its mind and reached the conclusion that the rates to South Dakota were maximum reasonable rates in the absence of a clear statement in the report to that effect.

The Commission's ultimate finding, couched in the language of the Act, that the rates assailed would be unreasonable for the future to the extent they exceeded those prescribed is not sufficient to support the Commission's order where, as here, it plainly results from a consideration of the entire report that the finding of unreasonableness was not made in the exercise of the Commission's statutory authority, but was made upon the assumption by the Commission of the possession of a power not conferred by law. *Southern Pacific Company v. Interstate Commerce Commission*, 219 U. S. 433. It is well settled that an order of the Commission must be set aside where it appears that the order is beyond its statutory power, or where, although the order be in form within the delegated power, the authority therein involved has been exercised in such an unreasonable manner as to cause it to be within the elementary rule that the substance and not the shadow determines the validity of the exercise of the power.

Interstate Commerce Commission v. Illinois Central Railroad, 215 U. S. 452.

Interstate Commerce Commission v. Union Pacific Railroad, 222 U. S. 541.

Interstate Commerce Commission v. Louisville & Nashville Railroad, 227 U. S. 88.

We think it will not be claimed that the Commission possesses the power which we contend it undertook to exercise in this case. The Commission does not possess the power to reduce freight rates for any reasons which seem to it good, but may reduce them only upon a proper finding supported by evidence that they are unreasonable or otherwise unlawful under the standards of the Interstate Commerce Act. In *Southern Pacific Company v. Interstate Commerce Commission*, 219 U. S. 433, it was held that the Commission did not possess the power to condemn a rate as unreasonable merely because it believed that the lumber interests of the Willamette Valley were equitably entitled to protection from an increase in rates. In *Ann Arbor R. Co. v. United States*, 281 U. S. 658, it was held that the Commission was without power to reduce a rate which had been found reasonable and lawful under the standards of the Interstate Commerce Act, merely because the industry was depressed, or because it believed that it was under a duty to place products of agriculture in a more favored class in the adjustment of freight rates. It seems equally clear that the Commission is without power to reduce freight rates which are not unreasonable under the standards of the Interstate Commerce Act, merely because of its desire for arithmetical symmetry in an adjustment of rates, or because of its belief that consumers of petroleum products situated in North Dakota and northwestern Minnesota are entitled to as favorable treatment at its hands as it had accorded consumers situated in South Dakota.

(b) *The Order is Void Because the Hearing Accorded the Carriers was Inadequate and Manifestly Unfair.*

Only two views of the Commission's action are possible. Either the Commission concluded that the rates which it had previously prescribed to South Dakota constituted a proper standard of maximum reasonable rates by which to determine maximum reasonable rates to North Dakota, or it concluded that equitable relationships of rates were of such primary importance that the rates in issue should be reduced, regardless of their reasonableness, to harmonize with other rates which could not be revised because not in issue. If the Commission's action was of the latter character, as we believe it was, the Commission's refusal to consolidate with this proceeding the proceedings also pending which brought in issue the relationships between the assailed rates and the competitive rates from Wyoming, and its refusal to give any effective consideration in this proceeding to those relationships was clearly arbitrary, and evinced an utter disregard for the substantial rights of the carriers. The District Court viewed the Commission's action as an attempt to fix intrinsically reasonable rates, and held that the carriers "had no absolute right to require that other controversies affecting other shippers and other territories be injected" (R. 284). We shall, therefore, consider the case from this viewpoint.

From the very inception of this proceeding, the Commission has considered the issues as involving the establishment of equitable relationships of rates rather than the establishment of maximum reasonable rates, and the carriers have at all times been required to defend and justify the rate relationships in the rate structure as well as the intrinsic reasonableness of the rates themselves. If, in the consideration of the rates here in controversy, the Commission could have put out of view its overweening insistence upon equitable rate relationships, we

agree that a fair hearing could have been accorded the carriers upon the question of the reasonableness of the rates which the Commission had prescribed to North Dakota and northwestern Minnesota, without bringing in issue the rates which had been contemporaneously prescribed to South Dakota. But the Commission's report shows conclusively that it was not able to do this. The result was that appellees did not receive a fair hearing of the reasonableness of the rates assailed to North Dakota and northwestern Minnesota, and could not obtain such a hearing with the rates previously prescribed to South Dakota not included within the scope of the investigation. It is no answer to this to say, as does the District Court, that the Commission could hear and consider in this proceeding the collateral question whether the South Dakota rates were a proper standard of maximum reasonable rates and upon such consideration reach the conclusion that the rates assailed were not too high, which would have ended the controversy. The fact remains that the South Dakota rates, not being in issue, were not subject to revision in this proceeding to correct any rate relationships which the Commission might regard as inequitable, and it was an intellectual impossibility for the Commission, with its settled convictions regarding the necessity for equitable rate relations in this rate adjustment, to accord the carriers a fair hearing upon the question of intrinsic reasonableness of the rates assailed, with the South Dakota rates not before it for revision.

The Commission is authorized by section 17 (1) of the Act, (U. S. Code Title 19, Section 17) "to conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice." The validity of its proceedings is not dependent upon compliance with the strict procedural rules as to pleading and practice which prevail in courts of law. But the more liberal its authorized procedure, the more

important it is that its proceedings shall recognize and protect the substantial rights of the parties and conduce to the ends of justice.

Interstate Commerce Commission v. L. & N. Rd. Co., 227 U. S. 88, 91.

A. T. & S. F. Ry. Co., et al. v. United States, et al, 284 U. S. 248.

Under the circumstances present in this case, the procedure which was followed by the Commission, and its action in restricting the issues to those presented by the complaint of the complainants in No. 17304 and in denying all of the petitions and requests of the carriers for an appropriate enlargement of the issues, resulted in a failure to recognize and protect the substantial rights of the carriers, and hence did not conduce to the ends of justice. The order of December 1, 1931, if not otherwise open to attack, is void for this reason, and the decree below is right.

CONCLUSION.

It is respectfully submitted that the decree of the court below is right and should be affirmed.

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St. Paul, Minnesota,
February 1, 1933.

APPENDIX.

The following provisions of the Interstate Commerce Act, as amended, are pertinent in this case:

Sec. 1 (5). "All charges made for any service rendered or to be rendered in the transportation of passengers or property or in the transmission of intelligence by wire or wireless as aforesaid, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful" * * *.

Sec. 3 (1). "That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

Sec. 13 (1). "That any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier, complaining of anything done or omitted to be done by any common carrier subject to the provisions of this Act, in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall

be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper."

Sec. 15a (2). "In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: *Provided*, That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country.

(3). "The Commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon, and such percentage shall be uniform for all rate groups or territories which may be designated by the Commission. In making such determination it shall give due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation: *Provided*, That during the two years beginning March 1, 1920,

SUPREME COURT OF THE UNITED STATES.

No. 470.—October Term, 1932.

United States of America, Interstate Commerce Commission, The Northwest Petroleum Association, et al., Appellants, *vs.* Northern Pacific Railway Company, et al.	Appeal from the District Court of the United States for the District of Minnesota.

[March 13, 1933.]

Mr. Justice Roberts delivered the opinion of the Court.

This appeal brings here for review a decree of a district court of three judges (60 F. (2d) 302) setting aside and enjoining the enforcement of an order of the Interstate Commerce Commission establishing rates on petroleum from the midcontinent field to destinations in western Minnesota and North Dakota.

The appellees' petition charged that the Commission exceeded its powers, denied a fair hearing, and abused its discretion in refusing to reopen the case and to receive proof of changes in economic conditions arising after the closing of the evidence. The District Court held against the appellees as respects the first two charges, but found that the third was sustained and therefore set aside the order. This the appellants say was error. The appellees, however, assert that the allegations and proofs as to changed conditions support the decree; and urge, in the alternative, that if this position be untenable, the action of the court was required for the other reasons recited in the petition.

The complaint, filed July 15, 1925, alleged the existing rates were unreasonable. A hearing was held in October, 1925, and a report and order entered March 5, 1928, fixing rates effective June 14, 1928. A rehearing was granted June 10, 1929, the case was reheard, and the record closed on January 15, 1930. A petition of the carriers that the case be reopened and consolidated with certain others was denied April 14, 1930. The final report and order were

entered December 1, 1931, prescribing rates to become effective March 15, 1932. On February 3, 1932, the appellees presented a petition praying that the Commission vacate the order or postpone its effective date, grant a rehearing, and reopen the case for the admission of further evidence to show a change in economic conditions since the record had been closed. This was dismissed, and the present suit was then instituted.

The appellees urge that the decision in *Atchison, Topeka & Santa Fe Ry. Co.* v. *United States*, 284 U. S. 248, requires us to hold that the Commission's refusal to reopen the proceeding was an abuse of discretion. That case, however, exhibited a substantially different state of facts. There the Commission conducted an investigation, pursuant to the Hoch-Smith Resolution, touching the entire structure of rates on export grain from the territory west of the Mississippi River and from Illinois. Here the inquiry embraced rates from origin points to a relatively small destination area. The diminution of carrier revenue consequent upon the new rates, while substantial, is far less than that effected by the order in the *Santa Fe* proceeding. In that case the record was closed in September, 1928, the matter submitted on argument July 1, 1929, and a report and order entered July 1, 1930, establishing rates to be charged on and after October 1, 1930. The effective date was postponed from time to time on account of the difficulty of adjusting the tariffs in accordance with the order. In September, 1930, the carriers requested a rehearing. Prior to action thereon the railroads brought to the Commission's attention their changed financial condition due to the economic depression. In November, 1930, a rehearing was denied. On February 18, 1931, a second petition for rehearing was presented, which was in effect a bill of review. It averred that due to the nation-wide depression which had its inception in November, 1929, the facts exhibited by the record as closed in September, 1928, were utterly unrepresentative of conditions existing at the effective date of the order some two and one-half years later.

In the proceedings under review the record was closed January 15, 1930. The economic depression, then begun, grew in intensity throughout that and the following year. During the pendency of the case appellees filed several petitions for rehearing, that of May 4, 1928 reciting that the carriers were unable under existing rates to earn the fair return contemplated by § 15a of the Act.

Between January 15, 1930 and February 3, 1932 no application based on changed economic conditions was made to the Commission, and that body was allowed to consider the record and prepare a report without notice of any claim in that behalf.

The Commission is not bound to allow existing unreasonable rates to stand solely because revision will in some degree adversely affect carriers suffering from economic depression. The decision in the *Santa Fe* case is not to be extended to require a rehearing in every rate case for changed economic conditions, however insignificant the effect of the order on carrier revenue. The rule announced, while intended to safeguard substantial rights of the railroads, may not be invoked where its application would disenable the Commission to protect the interest of the public.

Though the order substantially reduced the carriers' revenues, we do not consider the merits of the application for rehearing, as we think the carriers' lack of diligence in bringing this matter to the Commission's attention deprived them of any equity to complain of the refusal of their petition. They sat silent and took the chance of a favorable decision on the record as made. They should not be permitted to reopen the case for the introduction of evidence long available and susceptible of production months before the Commission acted. The denial of a rehearing, in view of this delay, was not such an abuse of discretion as would warrant setting aside the order.

This conclusion requires the reversal of the decree, unless, as the appellees contend, it may be sustained upon the other grounds presented to the District Court. We turn then to these aspects of the controversy.

The complaint attacked the existing rates as unreasonable, and did not charge undue preference or prejudice; but, it is said, the Commission based its order solely upon prejudice due to the relation of these rates with others in force in adjacent territory. The argument is that the relief granted was different from that invoked and so beyond the Commission's power. The appellees also claim that when they discovered that the Commission was proceeding upon the basis of relationship, rather than reasonableness, they vainly sought an opportunity to show that the rates used as comparatives were unreasonably low, and therefore of no probative value. The Commission's dismissal of certain petitions for further hearing upon consolidated records, presently to be de-

scribed, is represented as a denial of a fair hearing, in that the carriers were prevented from showing the impropriety of the comparisons used. The examination of these contentions requires a detailed statement with respect to this and other proceedings before the Commission.

Prior to the filing of the complaint in this case (No. 17304) the Commission was engaged in an investigation (No. 15584) of rates on petroleum from midcontinent territory to western trunk line destinations and Indiana, Illinois, and northern Michigan. Midcontinent origins had been grouped for rate making purposes, and the principal contention in No. 15584 was that the rates from the different blanket origins were not properly related. In that proceeding, however, intervenors residing in North and South Dakota alleged that the rates from the midcontinent field as a whole to destinations in those states were unreasonably high and prejudicial when compared with the tariffs in force to other territory. Certain related complaints were consolidated with No. 15584 and all were heard on a single record. While the investigation was under way the complaint in the present case, No. 17304, was filed by North Dakota and western Minnesota complainants, and was heard on a separate record. There had also been filed a complaint known as No. 16309, by South Dakota consignees, attacking the rates to that territory as unreasonable and also as unduly prejudicial in their relation to rates to Iowa and southern Minnesota. In May, 1926, a report was filed in No. 15584 (112 I. C. C. 421) readjusting the rates from various origin blankets in the midcontinent field to western trunk line destinations and declaring the new rates to be just, reasonable and non-preferential. Referring to the interventions of consignees in North and South Dakota and to case No. 16309, affecting South Dakota, the Commission stated that the record was not adequate for a finding with respect to the rates to those destinations, and announced that No. 15584 would be held open for further consideration in connection with No. 16309. It subsequently consolidated No. 16309 and the present case, No. 17304, with No 15584, and on March 5, 1928, filed a supplemental report establishing rates to the territory here in question, effective June 14, 1928, adjudging them reasonable and properly related to the rates to western trunk line territory theretofore prescribed (139 I. C. C. 605).

May 4, 1928 the appellees asked the Commission to postpone the effective date of this order, and to vacate its outstanding orders "in No. 15584 and associated cases, in so far as said orders related to rates to Lincoln and Omaha, Nebraska, Sioux City, Fort Dodge, and Mason City, Iowa, Duluth and St. Paul, Minnesota, and Sioux Falls, South Dakota, and to grant them a further hearing upon a single record with respect to the level of the rates from the midcontinent field to destinations in Nebraska, Iowa, South Dakota, North Dakota, and Minnesota." It will be observed the rehearing requested would affect all rates established in No. 15584 and related cases in the original and supplemental reports. The petition was denied February 11, 1929.

The required schedules having been put into effect, the carriers filed tariffs reducing the rates on petroleum from origins in Wyoming to points in North Dakota, South Dakota, and certain cities in Iowa, Nebraska and Montana—this upon the theory that these should be reduced to bring them into proper relationship with the new charges on petroleum from the midcontinent field. After hearing the Commission suspended the rates so promulgated (153 I. C. C. 363).

In November, 1928, Dacotah Oil Company, et al. filed a complaint, No. 21737, alleging that the rates fixed by the order of March 5, 1928, to certain North Dakota points, were unjust and unreasonable, and praying the establishment of just and reasonable rates for the future. This was heard in March, 1929, and the record then closed. April 19, 1929, the complainants in this cause, No. 17304, filed a petition alleging that the rates prescribed March 5, 1928, were unjustifiably high as compared with those to the Minnesota gateways adjoining the destination territory in western Minnesota and North Dakota. On June 10, 1929, the Commission reopened the case. Three months later the Standard Oil Company of Indiana, operating refineries at Casper, Wyoming, filed its complaint alleging that rates on petroleum from Casper to North Dakota, South Dakota, Iowa and Minnesota were unreasonable and unduly prejudicial to the complainant, and unduly preferential of producers in the midcontinent field. This complaint was docketed as No. 22714. At about the same time the Public Service Commission of Wyoming filed a similar complaint (No. 22733) with respect to rates from Wyoming origins to the same destina-

tions. The Commission thereupon assigned the present case, No. 17304, for further hearing on January 13, 1930. Just prior to that date the appellees petitioned the Commission asking that this complaint and the two just mentioned, concerning rates from Wyoming, should be consolidated for hearing and decision upon a common record, alleging that if any change were made in No. 17304 in the rates prescribed by the Commission March 5, 1928, from the midcontinent field, such readjustment would directly and necessarily disturb the relationship between midcontinent and Wyoming rates, which relationship was brought into issue by the complaints in No. 22714 and 22733.

On January 14, 1930, the appellees filed with the Commission a petition in No. 15584 and associated cases, requesting that they be reopened for further hearing with respect to rates therein prescribed from the midcontinent field to the key or gateway points such as Lincoln and Omaha, Nebraska; Des Moines, Fort Dodge, Sioux City, and Mason City, Iowa; Sioux Falls, South Dakota; and St. Paul and Duluth, Minnesota, and to the territory beyond such gateway points, and that the above mentioned cases be consolidated with the two complaints respecting rates from Wyoming; this on the ground that the whole structure of rates ought not to be dealt with and adjusted piecemeal, since to do so would inevitably result in unnecessary dissipation of carrier revenue and create inconsistencies and dissatisfaction; and that the only way in which the complaints of discrimination, preference and prejudice in the rate structure could be satisfied would be by proceeding upon one record, with all interested parties before it, to work out a harmonious, consistent and otherwise lawful adjustment which would protect rather than unnecessarily sacrifice the revenues of the carriers. April 14, 1930, the petition was denied.

On December 1, 1931, the Commission made and filed its report and order in this cause and No. 21737, whereby the rates established by the order of March 5, 1928 were revised (179 I. C. C. 435).

The petition in the District Court sets forth the matters above outlined and summarizes the action of the Commission in the various proceedings. The answers of the United States and the Commission admit the filing of the several complaints and the making of the reports and orders thereon; deny that the description of

the Commission's action set out in the petition is accurate or complete; and refer to the reports and orders for a correct statement of what the Commission did. At the trial none of the records in any of the complaints was put in evidence. The several petitions for rehearing and for consolidation are recounted and summarized in the petition, but are not set forth, nor included in the record. In considering the questions presented we are thus confined to the Commission's reports supplemented by the averments of the pleadings as to the substance of the applications for reopening, consolidation and rehearing.

It should be noted that appellees were parties respondent in each of the proceedings above-mentioned. In some the rates under attack in the present cause, No. 17304, were alleged to be unreasonable under Section 1 of the Act, and also unduly prejudicial within the intent of Section 3, and the carriers had full opportunity to be heard on both issues. In No. 15584, the *Midcontinent* case, the Commission expressly held open the question of the rates to North Dakota and western Minnesota for further consideration in connection with No. 16309, which charged that existing rates to South Dakota were unreasonable and unduly prejudicial as compared with the rates fixed in the *Midcontinent* case to the gateways and to western trunk line territory. In the supplemental report in the latter the Commission dealt with the South Dakota rates and those here involved. In the order of March 5, 1928, and in the final order of December 1, 1931, the Commission found that the rates prescribed were just and reasonable, and were properly related to those established in No. 15584. Note was taken of the fact that the rates to certain of the gateways were unduly depressed, and it was said that those established to South Dakota points, than which the rates prescribed herein are higher, had for that reason been raised above the depressed level of rates to the gateways.

In the absence of the evidence before the Commission we cannot say that there was no adequate and sufficient proof on which to base a finding of the reasonableness of the rates prescribed.* It

*The principal reliance of the appellees is a statement by a dissenting Commissioner that "the adjustment here required is based very largely upon our previous findings in the Midcontinent Cases, which we have repeatedly stated required rates below reasonable maxima". The Commission's report is at variance with the stated conclusion, and in the absence of the record on which the report and order were based, we cannot infer that, in the determination of reasonableness, undue weight was given to relationship.

is true that in both reports touching the rates here in controversy the Commission used as comparatives rates from the midcontinent field to South Dakota points and those from Wyoming origins to South Dakota and North Dakota destinations. But it appears from the reports that the carriers themselves presented comparisons of these very rates in support of their contentions. Thus both the appellees and the Commission recognized what has long been settled —that existing rates for similar service to other destinations may be used for comparison as one test, though not a controlling one, upon the question of the reasonableness of the rates in issue. The Commission's reports do not sustain the averments of the petition that the question of reasonableness was disregarded and the order based solely upon a comparison with rates which were unduly and unreasonably low.

But the appellees say that if the Commission intended to give weight to the relationship of the rates established in No. 16309, to South Dakota, it should, in fairness, have permitted that case to be reopened and should have afforded opportunity for proof that the South Dakota rates were fixed in relation to the western trunk line tariff, which was unreasonably low due to competitive conditions. The record in the District Court fails to support this argument. As above noted, the carriers had been parties to the record in No. 16309, and confessedly the rates there established for South Dakota destinations were made relatively higher than those to trunk line territory. Moreover the petition of January 14, 1930 did not specifically request the Commission to reopen No. 16309 for the purposes of proof as to the South Dakota rates.

The appellees now insist that what they desired was an opportunity to show that the South Dakota tariffs were worthless as a guide to the proper charges to North Dakota destinations. But their petition disclosed no such purpose. It requested the reopening of the records "in No. 15584 and associated cases, including the Wyoming complaints." The granting of a rehearing upon this petition might have involved the retrial of all the midcontinent cases and the Commission was warranted in understanding that this was the scope of the application. The relief asked was much broader than was necessary to the purpose appellees now avow, and we think they cannot successfully challenge the Commission's refusal to consider all midcontinent petroleum rates established after full hearings to which the carriers had been parties. We are

not referred to any request for the reopening of the South Dakota complaint, No. 16309, which appellees say was the specific proceeding they desired consolidated with this case, No. 17304.

It is further asserted that the failure to consolidate the present proceeding with the two complaints as to rates from Wyoming to North Dakota points deprived the appellees of a fair hearing because the scale of rates from the midcontinent field ought to bear a just relation to those from Wyoming origins. The answer to this contention is found in the Commission's reports. All of the parties complainant and defendant in this case and in No. 15584 introduced evidence as to the existing rates from Wyoming origins and compared them with those from the midcontinent field to North and South Dakota and western Minnesota, the complainants in order to sustain their position that the latter were unreasonable, the respondents to support the view that they bore a proper relation to the Wyoming rates and ought not to be reduced. It cannot therefore be said that by the refusal to consolidate the Wyoming complaints with the present proceeding the carriers were denied a fair hearing on the question of relationship between the two rate structures.

The District Court was right in holding that the appellees did not make out the claims that the Commission exceeded its statutory authority or denied a fair hearing. But as we think the District Court erred in holding that the Commission improperly refused the petition of February 3, 1932, for a rehearing based upon changed conditions, the judgment must be reversed.

So ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.